

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
(TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)
AUSTIN, TEXAS

APPLICATION OF TEXCOM GULF)
DISPOSAL, LLC, FOR TEXAS) SOAH DOCKET NO.
COMMISSION ON ENVIRONMENTAL) 582-07-2673
QUALITY COMMISSION UNDERGROUND) TCEQ DOCKET NO.
INJECTION CONTROL PERMIT NOS.) 2007-0204-WDW
WDW410, WDW411, WDW412 AND WDW413)

APPLICATION OF TEXCOM GULF)
DISPOSAL, LLC, FOR TEXAS) SOAH DOCKET NO.
COMMISSION ON ENVIRONMENTAL) 582-07-2674
QUALITY COMMISSION INDUSTRIAL) TCEQ DOCKET NO.
SOLID WASTE PERMIT NO. 87758) 2007-0362-IHW

HEARING ON THE MERITS
THURSDAY, DECEMBER 13, 2007

BE IT REMEMBERED THAT at 9:00 a.m., on
Thursday, the 13th day of December 2007, the
above-entitled matter came on for hearing at the
Montgomery County Commissioners' Court, 301 N.
Thompson, Suite 200, Conroe, Texas before THOMAS
WALSTON AND CATHERINE EGAN, Administrative Law Judges,
and the following proceedings were reported by
Patricia Gonzalez and Evelyn Coder, Certified
Shorthand Reporters of:

Volume 2

Pages 334 - 633

PROCEEDINGS
THURSDAY, DECEMBER 13, 2007
(9:00 a.m.)

JUDGE WALSTON: We'll go back on the record at this time. This is day two of the hearing on the Application of TexCom Gulf Disposal for Underground Injection Control Permits and an Industrial Solid Waste Permit. I'll note for the record that the proceeding today is being held in the Commissioners' Courtroom in Conroe in Montgomery County.

And can the applicant -- and I believe the County were going to post notices at the Civic Center where this was originally scheduled to be heard today advising people that the hearing was going to be held in this facility. Did that get accomplished? Can we just confirm that on the record?

MR. RILEY: We called after we were off the record yesterday, and the County took responsibility for doing that.

MR. WALKER: One of my assistants went out yesterday evening and posted the notice, Your Honor.

JUDGE WALSTON: Okay. Thank you very much. We will resume.

Mr. Greg Casey is on the witness stand, and I believe we were in the process of redirect examination by the applicant.

And, Mr. Casey, I remind you that you remain under oath.

A Yes, sir.

MR. RILEY: Thank you. May I step to the board again?

JUDGE WALSTON: Yes, sir.

MR. RILEY: Thank you.

PRESENTATION ON BEHALF OF THE APPLICANT (CONTINUED)

GREG CASEY, P.E.,
having been previously duly sworn, testified as follows:

REDIRECT EXAMINATION (CONTINUED)

BY MR. RILEY:

Q Mr. Casey, I'm going to take up the topic that we were discussing yesterday afternoon, specifically a well that we've come to know as C-4 and that correlates to a Railroad Commission identifier 66-D. Do you remember that discussion?

A Yes, sir.

Q And in our discussion yesterday to the present time, we had been able -- unable -- or you had been unable to locate records of a 66-D that is, I

guess, located on the T.C. Howell tract or survey and that there was another packet of documents referring to a 66-D that was on a Lemuel Smith survey. Is that correct?

A That's correct.

Q And last evening, did you have an opportunity to review the Lemuel Smith survey?

A Yes, sir, I did.

Q And could you tell the Judges what your -- what your review entailed and what you found?

A Well, we went back and looked at -- we've gone to the Commission three times to try and find data on Well C-4. The data in the application points to Well 66-D that's located in Lemuel Smith survey. And when we went back, as part of getting prepared for the hearing, we asked for information on wells around Well 315 and came back with the same information for Well C-4, the well located in the Lemuel Smith survey.

We had an associate go over there yesterday again to ask for data for this particular well site, and the data that came back was the same as we already had for the well located on the Lemuel Smith survey. When we asked what -- you know, "Why do we keep getting this data for a well that's located in a different survey," the response we had is that, you

know, "This is the data associated with that well spot and that more than likely the well has been mislocated on the Railroad Commission map."

We went and I reviewed the Lemuel Smith survey using the information off of the well records to see if there was a Well 66-D located in the Lemuel Smith survey. And reviewing the survey map and, you know, well distances in the data for Well 66-D, there is not a well located in that survey with that nomenclature, which, to me, says that, you know, at whatever time back in history somebody put the spot on the map in the wrong place and it was not located in the correct survey when they plotted the map.

Q If -- so there seems to me there's two possibilities, either the driller or the holder/owner of the well misidentified the tract in which the well is located and it is plotted correctly on the Railroad Commission map on the T.C. Howell survey -- that's one possibility. Correct?

A Yes. That's correct.

Q The other possibility is it's not on the T.C. Howell survey in the area of the proposed facility at all and it's located five miles or so in which direction?

A It would be south, southwest.

<p style="text-align: right;">Page 339</p> <p>1 Q In the Lemuel Smith survey?</p> <p>2 A Yes, sir.</p> <p>3 Q All right. So either two possibilities --</p> <p>4 since you have no personal knowledge of where the well</p> <p>5 is located, either of those two possibilities are,</p> <p>6 indeed, possible.</p> <p>7 A Those are two possibilities. My belief is</p> <p>8 that it's actually located, based on the distances --</p> <p>9 let's go ahead and go to the record.</p> <p>10 It's in Volume 4, Page -- well, let's</p> <p>11 see. It starts on Page -- starts on Page 20 of TexCom</p> <p>12 Exhibit 8.</p> <p>13 If you look on Page 25, that's a plug-in</p> <p>14 report for the Well 66-D. It would be -- it says Box</p> <p>15 8. It gives the location for the lease boundaries --</p> <p>16 actually, instead of the lease boundaries, it's noted</p> <p>17 in there, it's actually to the survey boundaries, and</p> <p>18 it shows a well location 2,700 feet from the northwest</p> <p>19 line of the survey and 18,390 feet from the northeast</p> <p>20 line of the survey.</p> <p>21 The survey where the well is plotted is</p> <p>22 not 18,000 feet across. It's a smaller survey. So it</p> <p>23 would be -- based on those dimensions, it would be</p> <p>24 impossible for the well to be located within that</p> <p>25 survey.</p>	<p style="text-align: right;">Page 341</p> <p>1 Is that correct?</p> <p>2 A That's in the shale layer above the upper</p> <p>3 Cockfield.</p> <p>4 Q Let's -- so even if -- again, even if the</p> <p>5 well is located as plotted on the application map and</p> <p>6 the Railroad Commission map in the C-4 location, this</p> <p>7 would still be at least above the upper Cockfield and</p> <p>8 into a shale layer and consistent with the other wells</p> <p>9 we've discussed.</p> <p>10 A Yes, sir, it would.</p> <p>11 Q And I think we covered this yesterday. We</p> <p>12 now have Railroad Commission records that, in your</p> <p>13 opinion, are associated with all the wells that are in</p> <p>14 the cone of influence.</p> <p>15 A Yes, sir.</p> <p>16 Q And it's as depicted on this exhibit, 428 is</p> <p>17 Railroad Commission 29, C-12 is Railroad Commission</p> <p>18 27, C-7 is Railroad Commission 28.</p> <p>19 A That's correct.</p> <p>20 Q Returning to the other diagram I was working</p> <p>21 with yesterday, we've been talking about various</p> <p>22 layers beneath the site, and as we talked about it</p> <p>23 yesterday, it's a crude depiction of what geologic</p> <p>24 stratum look like -- strata, I suppose.</p> <p>25 When we were talking yesterday -- and</p>
<p style="text-align: right;">Page 340</p> <p>1 Q Is it your opinion then, Mr. Casey, that, in</p> <p>2 fact, C-4 or Well 66-D is actually located in the</p> <p>3 Lemuel Smith survey?</p> <p>4 A Yes, sir, it is.</p> <p>5 Q Okay. I'm going to indicate that on what's</p> <p>6 been received into the record as a demonstrative</p> <p>7 exhibit, TexCom 62, with a red circle around Lemuel</p> <p>8 Smith. And that's your opinion as to where that well</p> <p>9 is located?</p> <p>10 A Yes, sir, it is.</p> <p>11 Q Now, let's assume that you're incorrect for</p> <p>12 just a second and it is as plotted on the T.C. Howell</p> <p>13 survey. Is there a depth associated with that well?</p> <p>14 A Yes, sir, there is.</p> <p>15 Q And what is that depth?</p> <p>16 A A total depth of 5,020 feet.</p> <p>17 Q I'm going to write that up here somewhere.</p> <p>18 (Brief Pause)</p> <p>19 Q (By Mr. Riley) If the well were located on</p> <p>20 the T.C. Howell survey as plotted in the Railroad</p> <p>21 Commission map, what depth would 5,020 feet be</p> <p>22 associated with in terms of a stratum below the</p> <p>23 proposed site?</p> <p>24 A That's within the Jackson shale.</p> <p>25 Q Okay. So that's actually in the shale layer.</p>	<p style="text-align: right;">Page 342</p> <p>1 forgive me for forgetting where we left off, but we</p> <p>2 were talking about the different permeabilities that</p> <p>3 are expected in the various parts of the Cockfield</p> <p>4 formation.</p> <p>5 A Yes, sir.</p> <p>6 Q And you had in the injection interval, again,</p> <p>7 with all the discussion that was held yesterday, about</p> <p>8 500 to 800 millidarcy permeability.</p> <p>9 A Right.</p> <p>10 Q All right. And then 1 millidarcy for the</p> <p>11 middle Cockfield and 1 to 1.5 for the upper Cockfield.</p> <p>12 A 1 darcy for the --</p> <p>13 Q I'm sorry.</p> <p>14 A -- middle and 1 to 1-1/2 darcies for the</p> <p>15 upper.</p> <p>16 Q Right. And, actually, while it may seem</p> <p>17 planned, I misspoke. I'd like you to explain the</p> <p>18 difference between millidarcy and a darcy.</p> <p>19 A Millidarcy is one thousandth of a darcy,</p> <p>20 so --</p> <p>21 Q If there were a connection in the area around</p> <p>22 the well between the middle Cockfield and the upper</p> <p>23 Cockfield, either through an artificial penetration,</p> <p>24 which we don't have any evidence of, or some sort of</p> <p>25 fracture or some -- some mechanism, communication</p>

1 through this narrow shale layer that separates the two
2 stratum, would your pressure gradient fall off more
3 quickly, more slowly? How does it work, if, indeed,
4 there is any transmissivity between those lawyers?

5 A If there's connection between the lower and
6 the middle?

7 Q Yes, sir.

8 A Your pressure would drop off faster because
9 you have higher permeable zone available to accept the
10 pressure. So the fluid would move more easily into
11 the higher permeable strata, and so your pressure
12 build-up would be significantly less.

13 Q So is it fair to say, then, your expectation
14 would be that the cone of influence is actually much
15 narrow -- or closer to the radius is smaller than
16 750 feet?

17 A Yes.

18 Q Now, based on your evaluation of the
19 information available to you and the information
20 presented in the application, do you think that there
21 is a communication between the -- say, the lower and
22 the middle Cockfield?

23 A I believe there's communication at the fault
24 located 4,400 feet south of the injection site.

25 Q Is that depicted in the application?

1 A Yes, it is.

2 Q How about between, say, the middle and the
3 upper Cockfield?

4 A There again, at the fault, 4,400 feet from
5 the well site, those layers, the middle and the upper
6 are in communication.

7 Q And that's -- is that how you modeled them in
8 the BOAST98 model?

9 A We didn't include the upper because it's --
10 it wouldn't make any difference in the model itself.
11 It would actually make the -- everything smaller. It
12 would make the cone of influence smaller if we
13 included the upper; so we basically limited it that at
14 the fault it could cross into the middle, and we -- we
15 didn't include the upper because it just adds more
16 thickness and your pressure would drop lower. So to
17 be conservative, we said, you know, we'll just limit
18 it to going to the middle.

19 Q Is that another aspect of conservatism in
20 your modeling?

21 A Yes, it is.

22 Q Good news. I think I'm done with the
23 diagram. I just have a few more questions.

24 MR. RILEY: Actually, while we're on
25 that topic, I'd ask that this be identified for the

1 record as TexCom Exhibit 68.

2 (TexCom Exhibit No. 68 marked)

3 MR. RILEY: And I'd ask that it be
4 accepted into the record as a demonstrative exhibit.

5 JUDGE WALSTON: Is there any objection
6 to TexCom Exhibit 68 being admitted for demonstrative
7 purposes only?

8 (No verbal response)

9 JUDGE WALSTON: There being no
10 objection, it's admitted.

11 (TexCom Exhibit No. 68 admitted)

12 MR. RILEY: I have no further questions
13 at this time. I pass the witness.

14 JUDGE WALSTON: Okay. Any recross by
15 Lone Star?

16 MR. HILL: Brief recross, Your Honor.

17 JUDGE WALSTON: Okay.

18 RECROSS-EXAMINATION

19 BY MR. HILL:

20 Q Good morning, Mr. Casey.

21 A Good morning.

22 Q I have some follow-up questions based on the
23 conversation that you and I had yesterday and based on
24 the redirect examination of Mr. Riley.

25 We talked, yesterday, about -- I believe

1 you indicated -- acknowledged that there was, indeed,
2 a fall-off test included on WDW-315. Is that correct?

3 A That's correct.

4 Q That test was conducted as part of the
5 completion report that was required under TCEQ rule to
6 be conducted with respect to that well. Is that
7 right?

8 A That's correct.

9 Q And you've reviewed the results of that
10 fall-off test?

11 A Yes, sir, we have.

12 Q Your understanding is that the fall-off test
13 recognized that the permeability of the injection
14 reservoir at the current perforated interval was
15 around 81 millidarcies. Is that right?

16 A That's correct.

17 Q Is there any reason why you don't believe
18 that that, indeed, is an accurate depiction of the
19 permeability of the injection reservoir at that
20 perforated interval?

21 A It's the permeability they determined from
22 testing that portion that they perforated. In
23 reviewing the perforated interval, the areas they
24 chose to perforate contain a high quantity of shale in
25 them. They're not the high-quality sands that were

<p style="text-align: right;">Page 347</p> <p>1 available in other portions of the lower Cockfield, 2 including the portion that was cored during the 3 drilling of the well. For whatever reason, they chose 4 to perforate in the lower-quality portion of the 5 reservoir. 6 Q Based on that -- the presence of so many 7 shales in that particular strata, is there a reason 8 why you would doubt that the 81 millidarcy reading of 9 that particular fall-off test is incorrect? 10 A As far as the analysis shows, it's the value 11 they determined during their fall-off test from their 12 analysis. 13 Q And you believe that, then, the well as it 14 exists today -- as distinguished between adding 15 additional perforations down the road, that WDW-315 as 16 it exists today has an average permeability in the 17 perforated interval of 81 millidarcies. Is that 18 correct? 19 A That's correct. 20 Q Okay. Along those lines, then, if additional 21 perforations were not made to WDW-315 and if 22 operations were conducted on that well -- injection 23 operations as it exists today, the model that ALL 24 Consulting -- that you put together and your team put 25 together with respect to that application, does it</p>	<p style="text-align: right;">Page 349</p> <p>1 Q But if they did, if other subsurface faults 2 do exist, would that affect your calculations? 3 A Not necessarily. It depends on, you know, if 4 there's sufficient throw to -- you know, in the fault 5 or their orientation to the injection well. There's 6 lots of other factors that would come into play, 7 because, you know, you could have a fault out there 8 that has, you know, little or no displacement; so it 9 wouldn't affect your calculation. 10 Q Would it be important in your calculations to 11 locate any additional faults if they do exist? 12 A Yes. 13 MS. STEWART: I have no further 14 questions. Pass the witness. 15 JUDGE WALSTON: Okay. Individual 16 Protestants. 17 MR. FORSBERG: Yes, Your Honor, just 18 briefly. 19 RECROSS-EXAMINATION 20 BY MR. FORSBERG: 21 Q Good morning, Mr. Ross. 22 A Mr. Casey. 23 Q Mr. Casey. I'm sorry. 24 (Laughter) 25 Q (By Mr. Forsberg) I haven't had enough</p>
<p style="text-align: right;">Page 348</p> <p>1 accurately depict the permeability of the injection 2 reservoir as that well was constructed and perforated 3 today? 4 A No. 5 MR. HILL: Thank you, Mr. Casey. 6 I pass the witness. 7 JUDGE WALSTON: Okay. Montgomery 8 County, Conroe? 9 MS. STEWART: I have no further 10 questions for this witness. 11 MR. WALKER: One moment, Your Honor. 12 (Brief Pause) 13 MS. STEWART: I withdraw that 14 statement -- 15 (Laughter) 16 MS. STEWART: -- and I would like to ask 17 one question. 18 JUDGE WALSTON: Okay. Sure. 19 RECROSS-EXAMINATION 20 BY MS. STEWART: 21 Q Mr. Casey, if other subsurface faults exist 22 in the area of review, would their existence affect 23 your calculations that you've just expanded upon? 24 A Well, I don't believe any -- other faults 25 exist other than the ones that we mapped.</p>	<p style="text-align: right;">Page 350</p> <p>1 coffee yet this morning. 2 Is it my understanding that you located 3 information regarding C-4 or made opinions regarding 4 this Well C-4 last night? 5 A I talked to our associate who looked at the 6 Railroad Commission record yesterday. 7 Q Okay. Was there some record or something 8 that didn't exist when the application was made -- 9 when the initial application was made to TCEQ that you 10 couldn't have found at that time? 11 A No. The records we received are the records 12 we've received every time. It's the same records that 13 are in the application. You know, we pulled the 14 records based on the Railroad Commission map and it 15 was put into the binder as, you know, "Here's the 16 positions." You know, the fact that it was actually 17 in a different survey was never noticed because we 18 didn't specifically study that well because it's 19 outside the cone of influence. 20 Q But it was one of the -- one of the wells 21 that you identified as potentially being inside the 22 cone of influence, was it not? 23 A Right. In our subsequent review, we 24 determined that it's potentially within the cone of 25 influence. And in reviewing the -- you know, trying</p>

<p style="text-align: right;">Page 351</p> <p>1 to get all the data together, make sure we're -- you 2 know, everything is correct, we noticed that it's 3 actually in the wrong survey. 4 Typically, we go with the well spot -- 5 "Okay. The Railroad Commission says it's there," and 6 we're looking at the well data as far as, you know, 7 completion, formation, that sort of stuff. You know, 8 I did not notice that it was, you know, actually in 9 a -- you know, says to be in a different survey. 10 Q And that isn't something that you would have 11 checked into when the application was done prior to 12 this hearing; that was something you were able to do 13 after hours the first day of the initial -- of this 14 hearing. 15 A When we gathered the data, it was -- our 16 understanding, it was located in -- you know, around 17 the wellbore. So that's why we included the 18 information in the -- you know, as being plotted where 19 it's at. 20 Q But there's no new information that's 21 provided that you looked at for this opinion that you 22 testified about this morning. 23 A The only new information we received is the 24 fact that we've asked for the data two additional 25 times and come back with the same information that we</p>	<p style="text-align: right;">Page 353</p> <p>1 between the lower, middle and upper Cockfield? 2 A Personally, I did not. No, sir. 3 MR. FORSBERG: That's all. Thank you. 4 JUDGE WALSTON: Anything from Public 5 Interest Counsel? 6 MS. COLLINS: Just one question. 7 RECROSS-EXAMINATION 8 BY MS. COLLINS: 9 Q Mr. Casey, is it your understanding that 10 TexCom will be required to perforate the entire 11 145 feet? 12 A Yes, ma'am. 13 MS. COLLINS: Okay. No further 14 questions. 15 JUDGE WALSTON: From the Executive 16 Director? 17 MR. WILLIAMS: Just a few questions. 18 RECROSS-EXAMINATION 19 BY MR. WILLIAMS: 20 Q Mr. Casey, do you know at what depth the core 21 sample was taken from Well 315? 22 A I can look it up. 23 Q Would you, please? 24 A Yes, sir. 25 (Brief Pause)</p>
<p style="text-align: right;">Page 352</p> <p>1 already have, and that in discussion with the clerk at 2 the Railroad Commission, is that it has either been 3 mislabeled on the paperwork as the Lemuel Smith survey 4 or that the well was misplotted. And that's the data 5 we received yesterday. 6 Q From an unidentified clerk at the Railroad 7 Commission? 8 A That's correct. 9 Q Okay. In your work, are you familiar with a 10 document called -- or a publication called the Atlas 11 of Major Texas Oil Reservoirs from the Bureau of 12 Economic Geology? 13 A Yes. I've, you know, used it a time or two. 14 Yes, sir. 15 Q Okay. Is that a document that is used in 16 your business, line of work? 17 A From time to time, yes, sir. 18 Q Is it an authoritative document, something 19 that can be relied upon? 20 A It's a good source of information. 21 Q Okay. 22 A Yes. 23 Q Did you look at that document at all with 24 regards to your opinions regarding the number of 25 faults and breaks between the Cockfield formations --</p>	<p style="text-align: right;">Page 354</p> <p>1 A I believe Volume 6 of the application, TexCom 2 Exhibit 11. 3 (Brief Pause) 4 JUDGE WALSTON: Which volume are you 5 looking at? 6 A It is Volume 9. 7 Q (By Mr. Williams) Volume 9. 8 A It would be Page 126 of TexCom Exhibit 11. 9 Under 4.2.1, "Depths, Types and Recovery," the second 10 paragraph says "The second core was taken from the 11 Cockfield formation at a depth of 6,070 feet." They 12 attempted to core 30 feet and recovered a little over 13 14 feet of core. 14 Q Okay. And depth was 6,070 feet, and it puts 15 it in which part of the Cockfield? 16 A That is the lower Cockfield. 17 Q Lower Cockfield. But that's above or below, 18 which, of the current perforation? 19 A It's above the current perforation. 20 Q By about how far? 21 A The top of the perforated interval is 22 6,184 feet, and it goes -- extends down to 6,372 feet. 23 JUDGE WALSTON: Could you give me those 24 numbers again, the top and the -- 25 A The top is 6,184.</p>

1 JUDGE WALSTON: Okay.
 2 A And the bottom perf is 6,372.
 3 Q (By Mr. Williams) That's perforated
 4 interval?
 5 A That's perforated interval. And there's
 6 roughly -- there's 100 feet of actual perf over that
 7 distance.
 8 Q Okay. Could you indicate where you found
 9 that information?
 10 A Yes, sir. It's Texcom Exhibit 11, Page 38.
 11 Q Page 38. Thank you.
 12 Now, is it your testimony that the
 13 additional 45 feet of perforation will not be
 14 continuous with the current perforation? Is that
 15 correct?
 16 A That's correct.
 17 Q Okay. For informative purposes, how do you
 18 perforate a pipe once it's in the ground?
 19 THE REPORTER: I'm sorry. I couldn't
 20 hear you.
 21 Q (By Mr. Williams) How do you perforate a
 22 pipe?
 23 A Using a wireline or a tubing set tool -- they
 24 have perforating -- what they call perforating guns.
 25 It's basically a shaped charge that they run in the

1 well, and when you set it off, it will shoot a --
 2 anywhere from a quarter to a half inch hole in the
 3 pipe and extend out 14 to 18 inches in the formation.
 4 Q Okay. Once a section is perforated, can you
 5 unperforate it?
 6 A No, sir -- well, I take it back. You can
 7 unperforate it by cementing it.
 8 Q Okay. Is the Lemuel Smith survey anywhere
 9 within the cone of influence of TexCom -- I'm sorry --
 10 area of review on TexCom Exhibit 56?
 11 A No, sir. It's south.
 12 Q South. It's off the map.
 13 A It's off the map. Yes, sir.
 14 MR. WILLIAMS: I have no further
 15 questions. I'll pass the witness.
 16 CLARIFYING EXAMINATION
 17 BY JUDGE WALSTON:
 18 Q Okay. Mr. Casey. I had one clarifying
 19 question. If you can, go back to Volume 4, Exhibit 8,
 20 Page 25 in the Railroad Commission report.
 21 A You said Volume 4?
 22 Q Yes.
 23 A Exhibit 8?
 24 Q Yes. Page 25. It was the report.
 25 A Yes, sir.

1 Q I just noticed, on the Block 9b, it says the
 2 well location was 5.9 miles southeast from Conroe.
 3 A Yes, sir.
 4 Q Does that help any or not, or is -- does that
 5 depend on where you measure from Conroe or --
 6 A Well, from Conroe, it would still be off our
 7 map to the south.
 8 Q Okay. So that would also, I guess, from what
 9 you're saying, tend to confirm that it was -- the well
 10 was actually on the Lemuel Smith survey?
 11 A Yes, sir, it does.
 12 JUDGE WALSTON: Okay. Thank you.
 13 That's all I have.
 14 Any follow-up questions?
 15 MR. RILEY: Just a few. And I apologize
 16 to everyone and I'll give Counsel an opportunity to
 17 review this document, if it's appropriate. It is a
 18 certified copy of the Railroad Commission records
 19 relevant to 66-D which I was going to show the witness
 20 and introduce into evidence. Unfortunately, I don't
 21 have copies for everyone at this moment. I'll give
 22 everyone an opportunity to look at it, if that's
 23 appropriate. And I would make copies and hand them
 24 out after lunch, if that works for everybody.
 25 JUDGE WALSTON: So you're offering that

1 into evidence?
 2 MR. RILEY: I was going to have the
 3 witness look at it and see if it's the same record or
 4 a more thorough record and confirm that the
 5 certification date is December 12th, 2007.
 6 (Pause)
 7 FURTHER REDIRECT EXAMINATION
 8 BY MR. RILEY:
 9 Q Mr. Casey, could you take a look at the
 10 document that's just been handed to you by
 11 Mr. Williams?
 12 A Yes, sir.
 13 Q And do you find in that document at least a
 14 copy of the certification by the Texas Railroad
 15 Commission dated 12/12/2007?
 16 A Yes, sir, I do.
 17 MR. RILEY: Let me ask if the Court
 18 wouldn't mind marking that as TexCom Exhibit 69.
 19 (TexCom Exhibit No. 69 marked)
 20 MR. RILEY: At this time, Your Honor,
 21 I'd offer it into evidence as TexCom Exhibit 69.
 22 JUDGE WALSTON: Any objections?
 23 (No verbal response)
 24 JUDGE WALSTON: There being no
 25 objections, TexCom Exhibit 69 is admitted.

1 (TexCom Exhibit No. 69 admitted)
 2 MR. RILEY: And with your permission and
 3 permission of the parties, I'll make copies of the
 4 document at lunch and provide it to everyone.
 5 JUDGE WALSTON: That would be helpful.
 6 Q (By Mr. Riley) Mr. Casey, have you had a
 7 chance to look through TexCom Exhibit 69?
 8 A Yes, sir.
 9 Q And it's a -- there are more pages in TexCom
 10 Exhibit 69 than were originally provided with the
 11 application. Is that correct?
 12 A That's correct.
 13 Q And does that indicate that it is the -- as
 14 best you know from your experience with the Texas
 15 Railroad Commission, a complete copy of the well file?
 16 A Yes, sir, it is.
 17 Q Does it confirm what you had said earlier
 18 about the existence of the well, the location of the
 19 well in the Lemuel Smith survey?
 20 A Yes, sir, it does.
 21 Q And is the -- also additional information
 22 about a reworking of that well?
 23 A (No response)
 24 Q That's all right. I'll withdraw the
 25 question. The record will speak to the issue.

1 But the total depth of 5,020 feet, is
 2 that confirmed in TexCom Exhibit 69?
 3 A Yes, it is.
 4 Q Mr. Hill asked you about the fall-off test
 5 and Ms. Stewart asked you about other subsurface
 6 faults, and is there any relationship that one could
 7 decipher or determine from a fall-off test as to
 8 location to a fault?
 9 A Yes. And when you run a fall-off test, a lot
 10 of times you can identify changes in the reservoir out
 11 a distance from your well based on the pressure
 12 response, and a fault or a -- what we call a -- if you
 13 had a subsurface barrier of some sort -- you know,
 14 let's say there was a granite intrusion at some point
 15 out, you know, so many thousands of feet from the
 16 well. If your fall-off test reached that distance in
 17 the pressure response, you would see that as a
 18 boundary -- what we call a boundary effect.
 19 Q Would a fault show up in that boundary effect
 20 or -- explain that for me.
 21 A It could show up. It could show up. A fault
 22 could show up a couple of ways. One, if it was a
 23 nontransmissive fault, like a barrier to flow, you'd
 24 see a pressure response. Basically, it's kind of like
 25 the Doppler effect. The pressure goes out and it

1 would bounce back and you'd see a pressure inflection
 2 in your data. If you entered an area of higher
 3 permeability, you would see a pressure response also.
 4 The pressure would tend to drop off.
 5 Q Does a fall-off test have a distance
 6 associated with it? In other words, does it measure
 7 that phenomena a certain distance from the wellbore?
 8 A Yes, depending on the quality of the data,
 9 you typically determine how far out in the reservoir
 10 the test looked.
 11 Q With the fall-off test that was done with the
 12 existing well, what was that distance?
 13 A Let me see if I can pull that.
 14 (Brief Pause)
 15 JUDGE WALSTON: Which volume is that?
 16 A It's in Volume 9. It would be Page 165 of
 17 TexCom Exhibit 11. This is a copy of the well test
 18 analysis done on the fall-off test that was conducted
 19 after WDW-315 was drilled, and in the -- it would be
 20 the second to last paragraph, the last sentence, he
 21 states "No reservoir boundaries were observed in the
 22 radius of the investigation of this test, which was
 23 determined to be 1,500 feet."
 24 Q (By Mr. Riley) So while you disagree with
 25 the choice of sand to where the well was perforated in

1 terms of the overall permeability of the sand -- we've
 2 talked about that. 81 millidarcies versus 500
 3 millidarcies --
 4 A Yes, sir.
 5 Q -- the distance investigated in the fall-off
 6 test would indicate that there is no -- you explain.
 7 What does it indicate?
 8 A Well, it indicates there was no boundaries,
 9 you know, seen within 1,500 feet of the wellbore. So
 10 there's no areas of higher permeability or a fault or
 11 no-flow boundary seen within 1,500 feet.
 12 MR. RILEY: Thank you. I have no
 13 further questions and I pass the witness, I suppose.
 14 JUDGE WALSTON: Lone Star.
 15 MR. HILL: No questions, Your Honor.
 16 JUDGE WALSTON: Okay.
 17 MR. WALKER: One moment, Your Honor.
 18 FURTHER RECROSS-EXAMINATION
 19 BY MS. STEWART:
 20 Q Mr. Casey, could you please explain briefly
 21 what the purpose of a fall-off test is?
 22 A It's one method of determining the reservoir
 23 properties. Typically, you're trying to determine
 24 your permeability.
 25 Q So the primary purpose of a fall off test,

<p style="text-align: right;">Page 363</p> <p>1 based on your testimony, is to determine permeability?</p> <p>2 A Determine permeability, look for, you know,</p> <p>3 boundary conditions, those sort of issues.</p> <p>4 Q Is it typically used to identify faults?</p> <p>5 A Not typically, no, but they can be identified</p> <p>6 from a fall-off test.</p> <p>7 Q So that would not necessarily be the most</p> <p>8 reliable method of determining faulting within the</p> <p>9 distance that this fall-off test extends?</p> <p>10 A It's a reliable method, yes.</p> <p>11 Q And, again, could you remind the Court what</p> <p>12 the distance that the waste plume will travel within</p> <p>13 30 years of a facility's operation?</p> <p>14 A I believe it was twenty -- 2,770 feet, I</p> <p>15 believe.</p> <p>16 Q So fall-off test is not a primary means of</p> <p>17 determining faults, and its distance is 1,500 feet</p> <p>18 from the wellbore. Correct?</p> <p>19 A This fall-off test saw 1,500 feet out from</p> <p>20 the reservoir.</p> <p>21 MS. STEWART: I have no further</p> <p>22 questions.</p> <p>23 JUDGE WALSTON: Okay. Individual</p> <p>24 Protestants.</p> <p>25 MR. FORSBERG: Nothing further, Your</p>	<p style="text-align: right;">Page 365</p> <p>1 (TexCom Exhibit No. 57A marked)</p> <p>2 JUDGE WALSTON: We'll go back on the</p> <p>3 record.</p> <p>4 Will you raise your right hand?</p> <p>5 (Witness sworn)</p> <p>6 JUDGE WALSTON: Be seated and state your</p> <p>7 full name for the record.</p> <p>8 A My name is Bruce Langhus. That last name is</p> <p>9 spelled L-a-n-g-h-u-s.</p> <p>10 JUDGE WALSTON: Thank you, Dr. Langhus.</p> <p>11 MR. RILEY: Thank you, Judge.</p> <p>12 BRUCE G. LANGHUS, Ph.D., CPG,</p> <p>13 having been first duly sworn, testified as follows:</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. RILEY:</p> <p>16 Q Good morning, Dr. Langhus.</p> <p>17 A Good morning.</p> <p>18 Q Would you briefly describe your role in the</p> <p>19 preparation of the TexCom underground injection</p> <p>20 control well application?</p> <p>21 A I prepared the geological exhibits and the</p> <p>22 geological narrative to accompany the application.</p> <p>23 Q In relationship to this proceeding, have you</p> <p>24 also prepared prefiled testimony and provided a copy</p> <p>25 of your resume which have been previously marked as</p>
<p style="text-align: right;">Page 364</p> <p>1 Honor.</p> <p>2 JUDGE WALSTON: PIC.</p> <p>3 MS. COLLINS: No questions.</p> <p>4 JUDGE WALSTON: Staff.</p> <p>5 MR. WILLIAMS: No questions.</p> <p>6 JUDGE WALSTON: Okay. Thank you,</p> <p>7 Mr. Casey. You can step down.</p> <p>8 Do you need a minute to get ready for</p> <p>9 your --</p> <p>10 MR. RILEY: I was going to say if you</p> <p>11 want to take a morning break and we can -- before the</p> <p>12 next witness.</p> <p>13 JUDGE WALSTON: Sure.</p> <p>14 MR. WILLIAMS: A point of order.</p> <p>15 Mr. Riley added some marks this morning to Exhibit 67.</p> <p>16 I know it's just for demonstrative purposes, but does</p> <p>17 that need to be readmitted?</p> <p>18 MR. RILEY: I was going to actually do</p> <p>19 that at some point, because the next witness also will</p> <p>20 have, hopefully, something to say about Exhibit 67.</p> <p>21 JUDGE WALSTON: Okay. We'll go off the</p> <p>22 record and we'll take a 15-minute break. We'll come</p> <p>23 back at 10 minutes after 10:00.</p> <p>24 We'll go off the record at this time.</p> <p>25 (Recess: 9:56 a.m. to 10:10 a.m.)</p>	<p style="text-align: right;">Page 366</p> <p>1 Applicant's Exhibits 57 and 58?</p> <p>2 A Yes, sir.</p> <p>3 Q Have you reviewed that testimony in</p> <p>4 preparation for your live testimony here today?</p> <p>5 A Yes, sir.</p> <p>6 Q Do you adopt it today as your sworn testimony</p> <p>7 as if you were asked those questions and -- I'm sorry.</p> <p>8 Before I do that, are there any corrections to that</p> <p>9 testimony --</p> <p>10 A Yes, sir.</p> <p>11 Q -- that you would like to make at this time?</p> <p>12 A Yes, sir. Yes. There's one amplification.</p> <p>13 Q And I believe --</p> <p>14 MR. RILEY: Or I would ask that this be</p> <p>15 marked as Applicant's Exhibit 57A. I believe copies</p> <p>16 have been distributed to all parties.</p> <p>17 Q (By Mr. Riley) Is 57A the amplification that</p> <p>18 you're referring to -- or that you just referred to in</p> <p>19 your last answer?</p> <p>20 A Yes, sir.</p> <p>21 Q With the amplification in 57A and the</p> <p>22 prefiled testimony previously identified as 57 and</p> <p>23 your resume as Exhibit 58, is that the testimony that</p> <p>24 you would offer in this matter as your sworn direct</p> <p>25 testimony?</p>

1 A Yes, sir.
 2 MR. RILEY: At this time, I'd offer
 3 Applicant's exhibit 57, 57A and 58.
 4 JUDGE WALSTON: Okay. There were no
 5 objections filed previously; so TexCom Exhibits 57,
 6 57A, and 58 are admitted.
 7 (TexCom Exhibit Nos. 57, 57A and 58
 8 admitted)
 9 MR. RILEY: Thank you, Doctor.
 10 Pass the witness.
 11 JUDGE WALSTON: Okay. Lone Star.
 12 MR. HILL: Thank you, Your Honor.
 13 CROSS-EXAMINATION
 14 BY MR. HILL:
 15 Q Good morning, Dr. Langhus.
 16 A Good morning.
 17 Q I'm Jason Hill. I'm with the Lone Star
 18 Groundwater Conservation District. I just have a
 19 handful of questions for you.
 20 In your prefiled testimony, you
 21 reference three UIC -- what you refer to as UIC
 22 applications that you participated in that have been
 23 filed with a Texas regulatory agency. Is that
 24 correct?
 25 A Correct.

1 Q One of those you identify as a Class II
 2 well -- disposal well in Wise County. Is that right?
 3 A That's correct.
 4 MR. RILEY: I apologize, Your Honors.
 5 I'm having some trouble hearing Mr. Hill. I think
 6 it's the air conditioner.
 7 JUDGE EGAN: It's the air conditioner.
 8 MR. HILL: Let me see if I can do
 9 better.
 10 Q (By Mr. Hill) One of those was in Wise
 11 County -- is that correct -- Class II wells,
 12 Dr. Langhus?
 13 A That's correct.
 14 Q And then there were two applications left,
 15 and I -- let me back up. These are three applications
 16 in addition to the TexCom application. Is that
 17 correct?
 18 A Correct.
 19 Q Do you mind describing the other two
 20 applications you participated in?
 21 A Let me think. The two that I participated in
 22 was a combined Class II and Class I well in Cleburne
 23 County, Texas. The other was a Class I disposal well
 24 in Pittsburg County, Texas.
 25 Q Were those two applications ultimately

1 approved by the TCEQ?
 2 A Yes, sir.
 3 Q Were you working on behalf of the applicant
 4 on both of those?
 5 A Correct. Correct.
 6 Q Can you disclose the identity of the
 7 applicant for each --
 8 A Certainly. In Cleburne, Texas, the applicant
 9 was Hallwood Exploration and also the City of
 10 Cleburne, and in Pittsburg County, it was -- Pilgrim's
 11 Pride was the industrial client there.
 12 Q Thank you, Dr. Langhus.
 13 In reading through your prefiled
 14 testimony, part of your analysis with respect to
 15 TexCom and the TexCom UIC application included a look
 16 or a review for faults in the area of review. Is that
 17 correct?
 18 A Correct.
 19 Q You mentioned in your prefiled testimony that
 20 you reviewed hearing files from the Railroad
 21 Commission on the -- the Exxon hearing files for 1979
 22 and 2002. Is that correct?
 23 A There were a number of Humble, dash, Exxon
 24 filings in front of the Railroad Commission that I
 25 examined from about 1936 to 1996.

1 Q Do you happen to have your prefiled testimony
 2 in front of you?
 3 A I do.
 4 Q Would you mind turning to Page 8 of your
 5 prefiled testimony?
 6 A (Witness complied)
 7 Q There's a question and answer there from,
 8 essentially, Lines 12 down to the end of the page.
 9 And, specifically, at Lines -- and the question at
 10 Line 12 is: "What sources of information did you rely
 11 upon in performing your analysis." And I'm looking at
 12 Lines 23 down to the end of the page and I see 1979
 13 Exxon file and a 2002 ExxonMobil file. Is that -- am
 14 I reading your testimony correctly?
 15 A Correct. These are some of the most
 16 important sources -- as it says on Line 16, some of
 17 the most important sources that I used.
 18 Q Okay. So there are other sources that you
 19 referred to?
 20 A Oh, yes.
 21 Q Okay. Would those other sources include
 22 Exxon hearings files as well?
 23 A That's correct.
 24 Q Can you identify those Exxon hearing files?
 25 A Besides the Michaux and Buck article in 1936,

<p style="text-align: right;">Page 371</p> <p>1 there's a 1972 filing before the Railroad Commission, 2 a 1976, a 1977 and 1979, as well as the 1996. 3 Q So if I understand you correctly, in addition 4 to the '79 and 2002 files, you reviewed files from the 5 Exxon hearing in 1972. Is that -- 6 A Correct. 7 Q 1976, 1977. Are those correct? 8 A '79. 9 Q 1979 and 1996? 10 A (Witness nods head) 11 Q Is that -- 12 A That's -- 13 Q -- correct? 14 A -- correct. That's correct. 15 MR. HILL: Thank you, Dr. Langhus. 16 I pass the witness. 17 JUDGE WALSTON: Montgomery County. 18 MR. WALKER: Thank you, Your Honor. 19 CROSS-EXAMINATION 20 BY MR. WALKER: 21 Q Good morning, Dr. Langhus. My name is David 22 Walker. 23 A Good morning. 24 Q Let me proceed along that same line of 25 questioning that Mr. Hill asked you. You listed in</p>	<p style="text-align: right;">Page 373</p> <p>1 Q Let me ask you rather bluntly, Dr. Langhus: 2 You didn't list these other items of review after you 3 discovered that other experts in this matter had 4 reviewed them, did you? 5 A Let me answer you bluntly: No. 6 Q All right. Dr. Langhus, would you agree with 7 me that it would be important in this hearing and in 8 this application to review as much accurate factual 9 data concerning the Conroe oil field as possible? 10 A I would agree with that. 11 Q When we're talking about historical data, 12 data that goes back, perhaps, 25 and 30 years, if not 13 longer, is that information difficult to locate? 14 A Some of it is. A lot of it is not. 15 Q Okay. What are the means that you use or a 16 person would use to locate historically accurate 17 information concerning the geologic structure of the 18 Conroe oil field? 19 A Basic data such as electric logs, wireline 20 logs, well reports, well completion reports. Of 21 course, reports and information at the Railroad 22 Commission, the appropriate agency for storage of this 23 data. 24 Q Let me ask you: Typically, what entity or 25 entities would be the authors of that kind of</p>
<p style="text-align: right;">Page 372</p> <p>1 your prefiled testimony, on Page 8, four sources of 2 information that you say you rely upon. Is that 3 correct? 4 A Correct. 5 Q Why did you not list the other sources that 6 you've just enumerated to Mr. Hill? 7 A These were the -- those that -- that were in 8 front of me at the very moment that I filled this out, 9 and they were among the most important sources of data 10 on faulting that I've relied upon. 11 As a matter of fact, the 1936 article by 12 the Exxon geologist is one of the most important -- 13 one of the best studies that I've seen for determining 14 faulting in the area. The 1979 one was also. The 15 1996 filing by Exxon was also. 16 Q Would you agree with me, Dr. Langhus, that it 17 would have been helpful if you had listed all of those 18 others that you now testified about? Wouldn't it have 19 been helpful to put that in your prefiled testimony? 20 A Helpful to -- I'm sorry. 21 Q Well, helpful to this hearing to demonstrate, 22 factually, all of the information that you had 23 reviewed. Wouldn't that have been helpful to have put 24 that in your prefiled testimony? 25 A Perhaps.</p>	<p style="text-align: right;">Page 374</p> <p>1 historical data concerning the oil field -- the Conroe 2 oil field? 3 A It depends upon -- it depends upon the oil 4 field, but in this case, the primary source of data 5 would be either the Railroad Commission or Exxon -- 6 Exxon, slash, Humble, the operator of the field since 7 the '30s. 8 Q All right. The primary operator of the 9 field -- not counting today, but, historically -- 10 A Correct. 11 Q -- the primary operator was Exxon. 12 A Correct. 13 Q Would you agree, Dr. Langhus, that engineers, 14 perhaps geologists, but individuals employed by Exxon 15 might, in fact, be some of the most expert sources of 16 information about features of the Conroe oil field? 17 A They would certainly be -- they would 18 certainly be knowledgeable in the geology of the 19 field, yes. 20 Q Exxon being the primary producer of oil in 21 this field historically? 22 A Correct. 23 Q If Exxon experts, engineers, geologists, if 24 they were not the best source of information, who 25 would be?</p>

1 A A disinterested third party, perhaps. Exxon
2 frequently -- that is, all of the applications in
3 front of the Railroad Commission was Exxon asking for
4 something. I'm not saying that Exxon would shade the
5 scientific evidence, but they might -- but they would
6 probably present the evidence that was most
7 sympathetic to their case if they're asking for
8 relaxation of field rules or unitization,
9 modification, this kind of thing.

10 Q Thank you, Dr. Langhus. And by the same
11 token, if an Exxon report or if Exxon officials
12 admitted or indicated problems, difficulties or
13 challenges in the field, would that then enhance the
14 reliability of such a statement?

15 A It could.

16 Q Dr. Langhus, let me ask you: In the -- in an
17 oil field such as the Conroe field located in the Gulf
18 Coast region, would you expect to find faults in such
19 an oil field?

20 A Certainly.

21 Q I'm going to go out on a limb here with you,
22 Dr. Langhus. Why would that be?

23 A The nature of the field itself is the salt
24 core dome, domal feature, and, typically, in the Gulf
25 Coast tertiary, you find patterns of faulting over

1 these -- over these domal features caused by the
2 movement of salt, the upward movement of salt.

3 Q All right. Does that -- correct me if I'm
4 wrong, but that upward movement of salt and that
5 possibility or likelihood of faulting -- and tell me
6 if I'm misstating here, but doesn't that really --
7 isn't that part and parcel of a likely oil field?
8 Aren't we talking about a geology here that will
9 likely produce oil?

10 A Certainly. Certainly. That's -- I don't
11 have in front of me the statistics of how many salt
12 domes in the Gulf Coast are productive versus dry, but
13 I would guess it would be -- certainly a significant
14 percentage of the salt domes are productive of oil and
15 gas.

16 Q I'm not sure this is a good word,
17 Dr. Langhus, but given that movement of salt and that
18 possibility of faulting, does that make the
19 subsurface, at least to a layperson like me, sort of a
20 mobile subsurface as opposed to something certainly
21 less mobile?

22 A If you're trying to compare the Gulf Coast
23 tertiary to some place like Kansas, certainly the
24 mobility of the rocks within the Gulf Coast tertiary
25 is much higher, and that's certainly a characteristic.

1 There are salt domes that come to the surface where
2 the salt is at the surface, in which case the seal --
3 any kind of sealing formations have been breached, and
4 so probably that oil has leaked out, or a good deal of
5 it. However, not all salt domes and not all domal
6 features of salt are that mobile.

7 Q Okay. Thank you, Doctor. I appreciate that
8 answer.

9 And certainly -- I think, perhaps, the
10 information in front of us is that the Conroe field is
11 one of these rather unique salt domes.

12 A Correct. It's a large -- a fairly large
13 feature with a good deal of salt movement. However,
14 the salt has not risen to the surface, and, indeed,
15 the major sealing, trapping feature or trapping
16 element, the Jackson shale, about 1,100 feet of good
17 marine shale, is still intact. We know it's intact
18 because there's 770 million barrels of oil that was
19 withdrawn from the Cockfield in the Conroe field. If
20 that shale trap had been breached in some way, there
21 would not be that much oil.

22 Q Thank you, Dr. Langhus, and I would ask you
23 to focus on my questions and try to limit your
24 response to my question, but that -- thank you.

25 A I'm a frustrated professor, I guess. I'm

1 sorry.

2 (Laughter)

3 Q (By Mr. Walker) I'm familiar with --
4 (Laughter)

5 Q (By Mr. Walker) -- that. I think we're
6 going to see another one before we're done.

7 A Very good.

8 Q Let me ask you: With respect to this
9 particular application of TexCom Gulf Disposal for a
10 UIC Class I disposal well, are subterranean faults an
11 issue that merit serious consideration?

12 A Certainly.

13 Q And I'm going to ask you to lecture me a
14 little bit here and tell me why they merit serious
15 consideration.

16 A It's certainly possible that major faulting
17 can be permeability barriers, both in a lateral sense
18 and in a vertical sense. I had just -- just talked
19 about the Jackson shale being a barrier to vertical
20 migration, but faults can also be both a barrier --
21 either a barrier or an avenue of fluid escape.

22 Q All right. Thank you very much. That was
23 going to be -- you sort of anticipated my next
24 question. Faults could be barriers. They could be
25 avenues of migration for fluids below ground.

1 A That's correct. I've seen both in the Gulf
2 Coast tertiary.
3 Q Thank you, sir.
4 Let me ask you: You mentioned Kansas.
5 And I don't want to get far afield here, but let me
6 ask you if a subterranean structure -- and I use the
7 word "mobile." You cited Kansas, but -- would a
8 subterranean structure that was not as mobile, not
9 like the Gulf Coast region, be an area that might have
10 fewer faults or even the absence of faults?
11 A No. It depends upon where you are. But
12 certainly in Kansas I have a fair amount of
13 familiarity with that, a little bit more with
14 Oklahoma, where the rocks are harder, are stronger,
15 are older. You still have a -- you can have a high
16 degree of faulting. You don't have any salt domes in
17 Oklahoma, but -- or Kansas, but you do have
18 movement -- subterranean subsurface movement that can
19 cause a good deal of faulting in those situations
20 also.
21 Q Very well. Thank you.
22 Well, let me ask you this: Is there an
23 area of this country that you're familiar with that
24 would have a lesser possibility of faulting or maybe
25 virtually none at all?

1 A I'm from Minnesota, and I -- well, even there
2 I've seen faulting, so -- I can't think of any. Some
3 people try to say that the high level nuclear waste
4 site in Nevada is devoid of faulting. We'll see, I
5 guess.
6 I can't say. I can't say I know of a
7 place in the world that does not have faulting.
8 Q All right. Fair enough. Let me ask you
9 this: Are there places that have lesser degrees of
10 faulting than, let's say, the Gulf Coast region?
11 A Certainly. Certainly. Areas that have a
12 thin sedimentary cover -- the Dakotas come to mind
13 where there's maybe only 5,000 feet of sediment, and
14 it's old -- old sediment that faulting is not very
15 common.
16 Q All right. And let me ask you for --
17 perhaps, for my benefit and maybe for those in
18 attendance -- I'm going to try to make this a short
19 question, but the -- would you agree with me that the
20 entire premise of an injection well for deposit of
21 non-hazardous but yet waste fluids, the entire premise
22 is to shove that stuff underground and keep it there?
23 A That's correct. That's a major tenet of the
24 underground injection program as part of the Safe
25 Drinking Water Act of '77. Yes.

1 Q All right. So the idea, then, is to find a
2 location, presumably, where you can pump this material
3 to a subterranean location and where it won't move,
4 and if you can find a place where it won't move at all
5 forever at all, that would be good, wouldn't it?
6 A It would, especially keeping it out of
7 sources of drinking water.
8 Q Very good. Let me ask you, Dr. Langhus, if
9 you would look -- do you have your prefiled testimony
10 in front of you?
11 A I do.
12 Q If you would, look quickly at Page 12.
13 A Yes, sir.
14 Q Starting at Line No. 9, the question was
15 asked of you "What is the Conroe oil field," and your
16 answer was "This giant oil field, which includes the
17 area of the proposed wells, was discovered in 1931 and
18 has produced more than 717 million barrels of oil
19 through 1993."
20 A Correct.
21 Q Is that your testimony?
22 A Correct.
23 Q How would you characterize the Conroe oil
24 field in comparison to other oil fields that have been
25 discovered and produced in the United States?

1 A Certainly bigger than most.
2 Q Okay. Conroe field was a -- would you agree
3 with me, it's an absolutely active producer of oil
4 since 1930 up through -- well, maybe even today?
5 A It certainly is producing oil today. Not
6 very much, but it is certainly doing that. Yes. So
7 for the last 76 years.
8 Q I believe your testimony indicates that the
9 field saw about 750 producing wells. Is that correct?
10 A That's one number I've seen.
11 Q All right. And I believe your testimony on
12 Line 14, you've indicated that the vast majority of
13 those 750 wells were drilled to a depth of
14 approximately 5,000 feet.
15 A They were produced. They were producing from
16 sands at approximately 5,000 feet.
17 Q Okay. You're making a distinction there.
18 What would the drilling depth be, then, for those vast
19 majority of wells? If you know.
20 A That would vary, but the majority of them
21 were drilled just through the upper Cockfield, because
22 that's where the production was.
23 Q All right. So -- and I would ask you, then:
24 Is the upper Cockfield the upper area, I guess, that
25 we are -- the highest, closest to the surface area

1 that is the -- I guess that we've been discussing in
2 this hearing?

3 A It's the upper member of the TexCom injection
4 interval -- or injection zone. It's not the highest
5 hydrocarbons that are produced in the -- been produced
6 in the field. Those continue to be the production
7 from the Frio and the Vicksburg sands --

8 Q Okay.

9 A -- above the Jackson.

10 Q Thank you for that clarification, but the
11 upper Cockfield is the upper member of the injection
12 zone that's in -- listed in the application.

13 A Correct.

14 Q And the bulk of these 750 producing wells, is
15 it your testimony they have penetrated into that upper
16 Cockfield member?

17 A Correct.

18 Q So would it be fair to say, Dr. Langhus, that
19 there are some 750 penetrations through the Jackson
20 shale?

21 A Within the entire field, yes, 17,000 acres,
22 yes.

23 Q Yes, sir. All right. Do you know,
24 Dr. Langhus, how many wells have been located within
25 the area of review listed in the application?

1 A Slightly more than 500.

2 Q All right. Of those 500, would all of them
3 have been drilled down and through the Jackson
4 formation?

5 A Not all of them, but the majority.

6 Q Majority of 500 drilled through the Jackson
7 formation?

8 A Correct.

9 Q Now, then, with respect to -- let me back up.

10 Is it fair to describe these majority of
11 500 wells as what we call artificial penetrations?

12 A Yes.

13 Q So then we have some majority of 500 wells in
14 the area of review that have penetrated through the
15 Jackson formation?

16 A The majority, yes. Yes.

17 Q All right. Dr. Langhus, I'm not a scientist,
18 but if you have some majority of 500 artificial
19 penetrations through the Jackson formation, it sounds
20 to me like that Jackson formation, at least to the
21 extent of almost 500 penetrations, certainly can't be
22 called impenetrable or impermeable.

23 A It's certainly an impermeable formation.
24 There are certainly also artificial penetrations
25 within it. Yes.

1 Q All right. Well, if I was to -- if I was to
2 take a two-inch sheet of lead, solid, no holes in it,
3 and pour water on it, would that water go through the
4 lead?

5 A No, sir.

6 Q If I was to take that two-inch sheet of lead
7 and take a nice, hard drill bit and drill, say,
8 400-some-odd holes through that lead and pour water on
9 it, wouldn't the water go through it?

10 A It depends upon what you do with those holes.

11 Q Well, if I left them open.

12 A Yes, sir.

13 Q Thank you for that clarification.

14 Well, let's take that a step further.

15 Let's say I drill 400 holes through that sheet of lead
16 and 30 -- no -- 70 years ago filled them with
17 something and I -- I'm dead now and I don't know what
18 I filled them with and nobody else can tell me what
19 was filled in those holes and maybe those holes are no
20 longer filled. Would you expect that water to drip
21 through those holes?

22 A I'd have to look at the records of those
23 holes, determine what kind of a gun that you used to
24 shoot through the lead or drill through it, and I'd
25 have to look at -- candidly, I'd have to look at the

1 temperature at which you're keeping that sheet of
2 lead. Lead has an awful lot of strength to it. Some
3 formations in the Gulf Coast have strengths more like
4 porridge.

5 Q Very good. Thank you, sir.

6 Dr. Langhus, if I may, let me direct
7 your attention, also, to Page 12 of your prefiled
8 testimony. Starting at Line 21, the question was
9 asked of you, "Do you believe that an older oil field
10 is an inappropriate place to site a UIC facility," and
11 your answer -- the first part of your answer is "Not
12 necessarily." Is that right?

13 A Correct.

14 Q And you've indicated, then, in the next
15 sentence, "An older oil field can be a perfectly
16 appropriate setting for a disposal project." Correct?

17 A That's correct.

18 Q Dr. Langhus, that appears to me to be a
19 refreshing candor and suggests to me that an older oil
20 field could possibly not be an appropriate location
21 for an injection facility.

22 A That's true.

23 Q And, of course, the Conroe field clearly is
24 an older oil field, is it not?

25 A It's older than most.

1 Q And in the area of review, there are some 500
2 artificial penetrations.
3 A That's correct.
4 Q And you've testified the majority of those
5 penetrate down through the Jackson formation.
6 A That's correct.
7 Q Let me also ask you about -- again, on that
8 page, the same response starting at Line 23, you've
9 stated that an older oil field can be a perfectly
10 appropriate setting when waste injection is engineered
11 to be below most historical existing oil and gas
12 production.
13 MR. RILEY: Objection. That's not the
14 complete answer and actually was misread.
15 MR. WALKER: Thank you, Counsel. I'll
16 be glad to read the entire sentence.
17 MR. RILEY: Thank you.
18 Q (By Mr. Walker) "An older oil field can be a
19 perfectly appropriate setting for a disposal project,
20 especially when waste injection is engineered to be
21 below most historical and existing oil and gas
22 production in the vicinity, as is the case with
23 TexCom's project." That's your testimony?
24 A Yes, sir.
25 Q What do you mean with the phrase or the term

1 "when waste injection is engineered to be below"?
2 What do you mean by that?
3 A Certainly the UIC program within the United
4 States and certainly within the state of Texas has
5 some engineering standards that must be adhered to
6 when injecting waste, whether it's Class II saltwater
7 waste or whether it's hazardous or non-hazardous as
8 we're talking about this morning.
9 For instance, the -- any injection wells
10 must demonstrate their mechanical integrity. They
11 must demonstrate once a year that their casing is --
12 has integrity, doesn't have holes in it. And so what
13 I mean is that you can't just have an open hole that
14 you're running fluid into, that this has to be
15 carefully engineered and monitored.
16 Q Carefully engineered and monitored if you're
17 going to have an injection site in an older oil field?
18 A That would be prudent.
19 Q Would that level of prudence and care and
20 technical care be as necessary in a location that was,
21 quote, "not an older oil field"?
22 A No. The -- there are certain -- you probably
23 should ask this of an engineer rather than an old-time
24 geologist, but there are certain aspects of being in a
25 producing field, that the producing wells can act as

1 sentinels to problems that are -- that could be
2 happening downhole.
3 Q Ah, okay. That's good. Thank you.
4 MR. RILEY: Objection. He's
5 interrupting the witness' answer. I don't believe the
6 witness was finished.
7 JUDGE WALSTON: In all honestly, I think
8 the witness' answer was going beyond the question,
9 too, so --
10 MR. WALKER: Thank you, Your Honor.
11 Q (By Mr. Walker) I think I wasn't quite as
12 clear on my question, Dr. Langhus.
13 I'm going to have to look at your
14 response again. All right. This careful engineering
15 and prudence that you just testified about that you
16 think would be necessary and advisable for an
17 injection site in an older oil field, would that same
18 level of care and prudence that you're relating to a
19 site in an old oil field be as necessary in a location
20 that was no oil field, old or new?
21 A It could certainly be -- and, of course,
22 there's prudence required any time that you're putting
23 water -- or waste underground. And I'd have to say
24 that the prudence and monitoring and engineering would
25 be different in an oil field than in an area that has,

1 for instance, no artificial penetrations within the
2 area of review.
3 Q Dr. Langhus, I truly don't want to dispute
4 with you your testimony, but you've implied here on
5 Lines 23, 24 and 25 on Page 12 that siting an
6 injection well in an old oil field brings with it
7 unique challenges of care and unique challenges of how
8 to do it safely. And, clearly, the implication is
9 that that might not be the case elsewhere. That's my
10 question.
11 A And I'd have to say that it would depend upon
12 the old oil field and the AOR that contains no wells.
13 I'd have to say that they could be -- that they could
14 require the same amount of prudence, of careful
15 engineering. It all depends on the setting.
16 Q Let me ask you this: You agree with me, of
17 course, that we have here in the area of review close
18 to 500 artificial penetrations.
19 A Correct.
20 Q And we have here in the area of review -- at
21 least my word was a mobile oil-producing region.
22 A Correct.
23 Q Isn't it true, Dr. Langhus, that a place --
24 regardless of how far away it might be, but a place
25 that does not have almost 500 artificial penetrations

<p style="text-align: right;">Page 391</p> <p>1 and a place that is subterranean -- not some mobile, 2 old oil-producing region, wouldn't that be a better 3 location for an injection well? 4 A I could certainly posit a situation in 5 Oklahoma or Kansas that has a thin confining zone 6 that, perhaps, since you have no -- no well control in 7 your area of review could have geological holes in it. 8 Maybe your shale that you're counting on for the 9 confining zone goes to zero in some parts of that 10 area, and if you have, say, a dozen water wells in 11 that area of review that's within 100 feet of that 12 so-called confining zone, this could be a problem. 13 You don't want to have water wells acting as sentinel 14 wells. 15 Q Thank you, sir. 16 Dr. Langhus, of the artificial 17 penetrations within the area of review, how many, sir, 18 do you know absolutely for certain to be permanently, 19 properly and forever plugged so as to prevent upward 20 migration of fluids? 21 A I guess I didn't quite understand that. 22 Q I'll restate. Of the artificial penetrations 23 within the area of review, how many do you know to be 24 properly, permanently, forever plugged so that upward 25 migration of fluids won't happen?</p>	<p style="text-align: right;">Page 393</p> <p>1 that has some perforations in it. 2 Q Dr. Langhus, how many faults did you identify 3 within the area of review -- subterranean fault -- no, 4 no. I'm sorry. How many faults, total, did you 5 identify within the area of review? 6 A Two. 7 Q Are they both subsurface faults? 8 A They both are -- involve the upper Cockfield; 9 probably the lower Cockfield. So they're -- they are 10 in the subsurface. Yes. 11 Q Very good. Thank you. 12 If, in fact, there are other faults 13 within the area of review, would that be an important 14 issue for you? 15 A It would depend on the evidence where it 16 faults. 17 Q All right. If there was good evidence of 18 other faults within the area of review, would that be 19 an important issue for you? 20 A Yes. 21 Q Would it make any difference -- assuming that 22 there are other faults, would it make any difference 23 how many before it becomes an important issue? 24 A No. 25 Q Let me ask you this: If you found or if</p>
<p style="text-align: right;">Page 392</p> <p>1 A There's some -- there's certainly records 2 within the Railroad Commission that lead me to think 3 that there -- that these have been properly plugged, 4 and given the -- given a certain amount of pressure 5 increase within the injection interval, that upward 6 migration of injectate, of non-hazardous industrial 7 waste will not happen. 8 Q Thank you, sir. 9 And that's really the sum total of the 10 application, isn't it, that mathematical calculations 11 given in conjunction with the purported subsurface 12 structure, that this math within that context is going 13 to be sufficient to see to it that fluids don't 14 migrate upward like they're not supposed to? 15 A Certainly the mathematics, the engineering is 16 a big part of it, but I like the geology also. Having 17 an 1,100-foot marine shale separating water wells from 18 injection zone is a powerful argument. 19 Q And that 1,100-foot shale is the Jackson 20 formation? 21 A Correct. 22 Q Wouldn't you agree with me, Dr. Langhus, 23 that, really, we ought to be talking about a 24 perforated 1,100-foot shale? 25 A Basically, yes, talking about a thick shale</p>	<p style="text-align: right;">Page 394</p> <p>1 there were found other faults in the area of review, 2 would the issue become bigger or more important if the 3 number of faults increased? 4 A There would be other factors that would be 5 more important to me than the sheer number of the 6 faults. For instance, in the 1972 Exxon-Humble 7 submission to the Railroad Commission, there were -- 8 in the highest Cockfield sand, there was something 9 like 30 faults shown on their map that were in the 10 AOR, at least 30. I went blind trying to count them 11 all. But when looking at the individual faults, I 12 could see that the offset was trivial or zero and that 13 they did not persist into the deeper mapped horizons 14 so that they didn't even persist throughout the upper 15 Cockfield but were confined to only one or two sands. 16 So in that case, there was a large number of faults, 17 but the evidence for each one was limited. 18 Q Would you agree or disagree with the 19 statement, Dr. Langhus, that the Conroe field is a 20 highly faulted field? 21 A I'm not sure what "highly faulted" means. 22 There's certainly faults within it. I can't agree 23 with "highly faulted." 24 JUDGE WALSTON: Did you say can or 25 cannot?</p>

1 A Cannot.

2 Q (By Mr. Walker) Let me ask you that
3 question, perhaps, with just a twist. If Exxon
4 engineers, geologists, employees of Exxon who produced
5 this field described the Conroe field as a highly
6 faulted field, would that be of interest to you?

7 A I've seen that in the Exxon submittals to the
8 Railroad Commission, and I'm not sure -- you know,
9 that's like saying it's highly humid outside. It
10 depends on what you're comparing it to. If you could
11 say that there's -- that there are a number of faults
12 per square mile, then I could agree with that number,
13 and I would still have to have the evidence for the
14 faulting, whether it's just interpretational or
15 whether there's a fault cut in a well.

16 Q Let me ask you, Dr. Langhus, I think you made
17 reference to the -- is it an Exxon hearing before the
18 Texas Railroad Commission from 1979 entitled
19 "Application of Exxon in Conroe Field, Texas Railroad
20 Commission Oil and Gas Docket No. 03-7604 and
21 No. 03-71097, January 1979"? Are you familiar with
22 that report?

23 A Yes.

24 Q Do you recall a quote from that report,
25 Dr. Langhus, that goes as follows: "Hydrocarbon and

1 water movement across faults is still a very real
2 problem"?

3 A I do remember something much like that. I
4 can't remember the exact words, but yes.

5 Q Dr. Langhus, let me direct your attention to
6 Page 22 of your prefiled testimony. I believe your
7 answer that starts on Line 12, you say, that, yes, the
8 thick 1,000-foot marine mudstone of the Jackson
9 formation constitutes an ideal confining zone to seal
10 any faults, fractures and joints that might propagate
11 upward from the deep sediments draping over the salt
12 piercement structure. Is that right?

13 A Correct.

14 Q Dr. Langhus, how many artificial penetrations
15 through the Jackson formation would prevent it from
16 being considered an ideal confining zone?

17 A It would depend on the artificial
18 penetrations and what was done to those wells, whether
19 or not they were plugged with mud, plugged with
20 cement, whether they were cased, all of these things.

21 Q All right. If I understand your answer,
22 then, Dr. Langhus, the integrity of those artificial
23 penetrations would have a direct bearing upon the
24 status of the Jackson formation as an ideal confining
25 zone.

1 A Depending upon the nature of the pressure
2 increase brought about by the injection of
3 non-hazardous waste.

4 Q All right. Well, let's talk about the
5 Jackson formation as an ideal confining zone. Would
6 you agree with me that if it suffered no artificial
7 penetrations its status as ideal would be much
8 clearer?

9 A Certainly.

10 Q And if it has suffered some 500 artificial
11 penetrations within the area of review, then that
12 status of ideal now must depend upon the nature of
13 those penetrations.

14 A Exactly. Exactly.

15 Q As far as you know, Dr. Langhus, has there
16 been -- and this may sound like a silly question, but
17 I'm going to go with it. Has there been any
18 independent effort aside from review of records to
19 determine the integrity of those 500 artificial
20 penetrations?

21 A I could say that it happens every day within
22 the production of the current Conroe unit operated by
23 Wapiti Energy, the successor of Exxon, that they
24 should certainly be able to see whether or not there
25 are -- there's saltwater or whether or not there is

1 hydrocarbons leaking up into their producing -- or
2 producing and disposal zones within the Vicksburg and
3 Frio on top of the Jackson.

4 Q Very well. So if I understand your answer,
5 then, Dr. Langhus, you're saying that the evidence of
6 integrity or lack of integrity of these old 500 or so
7 penetrations is really dependent upon information that
8 might voluntarily be provided or discovered by the
9 current producer.

10 A They might voluntarily produce the knowledge.
11 More than likely, however, they would go to the area
12 where they expect to see some fluids coming up from
13 the deeper horizons and they would remediate those
14 wells that are, perhaps, unplugged. That would be the
15 prudent thing for an operator to do.

16 Q Okay. If I understand your response to that
17 question, then, it sounds, to me, like you're saying
18 that the determination now of the integrity -- excuse
19 me -- the determination now of the status of the
20 Jackson formation as an ideal confining zone is
21 dependent upon the integrity of some 500 artificial
22 penetrations which is going to be -- or should be
23 monitored and reported by some third party not a party
24 to this proceeding.

25 A If the pressure increases within the lower --

1 within the lower Cockfield injection interval, if
 2 those pressures are high enough to cause transmission
 3 of pressure or even transmission of waste up to the
 4 Jackson, then, yes, it would be. Then I would guess
 5 that responsibility for that kind of monitoring and
 6 remediation of the boreholes would devolve to TexCom.

7 MR. WALKER: Your Honor, I will pass the
 8 witness.

9 JUDGE WALSTON: Okay. Any questions
 10 from the Individual Protestants?

11 MR. FORSBERG: Yes, Your Honor.

12 JUDGE WALSTON: Okay.

13 CROSS-EXAMINATION

14 BY MR. FORSBERG:

15 Q Dr. Langhus, my name is Kevin Forsberg. I
 16 have just a few questions for you this morning.

17 Are you familiar with a document or
 18 publication called the Atlas of Major Texas Oil
 19 Reservoirs?

20 A Yes, sir.

21 Q Is that a document you reviewed when you were
 22 looking at the Conroe oil field in regards to this
 23 application?

24 A Yes, sir, I did.

25 Q Okay. And do you find that to be a reliable

1 source?

2 A It's a good source to start with.

3 Q Is it cited in any of your materials that you
 4 produced?

5 A I don't think so.

6 Q Okay. Are you familiar with any of the
 7 conclusions or statements that that publication makes
 8 with regards to faulting in the Conroe oil field?

9 A I don't recall.

10 Q I'm going to read you a statement. I'm just
 11 going to ask if you agree or disagree with this
 12 statement. "The main Conroe sand is actually several
 13 sands separated by shale beds." Do you --

14 A Certainly.

15 Q Do you agree with that statement?

16 A Yes.

17 Q Okay. "Extensive faults allow pressure
 18 equalization between reservoirs and gas gap leakage
 19 into the upper Cockfield sands."

20 A Again, "extensive" is like "highly faulted."
 21 I can't agree or disagree with it.

22 Q Okay. But as you sit here, you don't have
 23 any reason to disagree with it.

24 A No. It's just an inflammatory term that does
 25 not seem to be very scientific to me.

1 Q Okay. Well, if you take the word "extensive"
 2 off and you just say "Faults allow pressure
 3 equalization between reservoirs and gas gap leakage
 4 into the upper Cockfield sands," would you agree with
 5 that?

6 A That's been demonstrated.

7 Q Okay. So the liquids from the lower sands
 8 can come up into the upper Cockfield sand?

9 A No, no. No. The migration -- vertical
 10 migration is all within the upper part of the upper
 11 Cockfield so that we're talking about 150 feet or
 12 200 feet of migration. We're not talking about
 13 1,200 feet of migration bringing fluids and
 14 hydrocarbons out of the lower Cockfield. This is in
 15 the oil field itself, which is in the upper Cockfield.

16 Q Okay. And to get a couple of terms just
 17 clear in mind, in the UIC applications pending, the
 18 injection zone is the entire Cockfield formation.

19 A That's correct.

20 Q That's lower, upper and middle?

21 A Excuse me. Yes.

22 Q Okay. And then that is -- and then right
 23 above that is the Jackson formation.

24 A Yes, sir.

25 Q Which is approximately 1,200 feet.

1 A 1,100. 1,080 or something.

2 Q Okay. And directly above that is the
 3 Catahoula.

4 A It's the lower Catahoula, and there at
 5 Conroe, that consists of the Vicksburg sands sitting
 6 on top of the Jackson. And then above that is the --
 7 are the Frio sands.

8 Q Okay. In the application pending filed by
 9 TexCom, is the entire Catahoula down to 4,088 feet
 10 defined as an underground source of drinking water?

11 A Yes. I put that down there --

12 Q Thank you. I think that's -- my question was
 13 answered.

14 In your amended or corrected prefled
 15 testimony -- do you have that in front of you?

16 A Yes.

17 Q You identify a buffer zone of approximately
 18 2,800 feet to 4,000 feet below the ground.

19 A Correct.

20 Q Is it -- do you believe it's appropriate to
 21 define a buffer zone that is completely contained
 22 within an underground source of drinking water?

23 A I do.

24 Q Is that underground source of drinking water
 25 potentially usable in the future?

1 A No, sir.
 2 Q Why not?
 3 A Because the -- this buffer zone, this part of
 4 the Catahoula has been historically productive of oil
 5 and gas and is currently being -- and has historically
 6 been used as a disposal zone by Exxon and by Wapiti
 7 for disposing of saltwater produced from oil and gas
 8 wells in the Conroe field. So it's a -- although it
 9 meets the statutory definition of a USDW, that is, the
 10 water in it seems to be less than 10,000 parts per
 11 million, it is certainly not a source of -- not
 12 current source of drinking water and not in any shape
 13 or form a future source of drinking water. It would
 14 be so expensive to remove the trace amounts of oil
 15 or -- and the high salinity.
 16 Q That's based upon your understanding of
 17 current technology in regards to cleaning water or
 18 filtering water.
 19 A It is.
 20 Q It's quite possible, though, that if water
 21 runs short, that technology may advance and we may
 22 have to tap into that source of water.
 23 A Of course, anything is possible, but looking
 24 at the Safe Drinking Water Act program, and especially
 25 the UIC, the US EPA has granted -- and so has the

1 TCEQ, granted exemptions from USDW status for
 2 reservoirs like this that have historically produced
 3 oil and gas, and, therefore, have made them unusable
 4 water.
 5 Q Is there such an exemption in place for this
 6 area?
 7 A No. I don't think anyone has required it of
 8 either Exxon or Wapiti.
 9 Q So as we sit here today, as the application
 10 that TexCom filed states, down to 4,088 is an
 11 underground source of drinking water.
 12 A It's a USDW, yes.
 13 Q Which is an underground source of drinking
 14 water.
 15 A Correct.
 16 Q And you are testifying that the buffer zone,
 17 which I believe would be required by Texas
 18 Administrative Code Chapter 30 Section
 19 331.121(c)(4)(A) as stated in the question, is within
 20 the underground source of drinking water?
 21 A That is correct.
 22 MR. FORSBERG: Okay. That's all I have.
 23 Thank you. I pass the witness.
 24 JUDGE WALSTON: Okay. Public Interest
 25 Counsel?

1 MS. COLLINS: No questions.
 2 JUDGE WALSTON: Executive Director.
 3 CROSS-EXAMINATION
 4 BY MR. WILLIAMS:
 5 Q Good morning, Dr. Langhus. My name is John
 6 Williams.
 7 A Good morning.
 8 Q I represent the Executive Director.
 9 You mentioned one of the projects you
 10 worked on was Pilgrim's Pride injection well.
 11 A Correct.
 12 Q Just as a clarification, you said Pittsburg
 13 County. I'm not certain there is a Pittsburg County
 14 in Texas. Could it be --
 15 A It's near the town of Pittsburg.
 16 (Laughter)
 17 Q (By Mr. Williams) Near the town of
 18 Pittsburg.
 19 In your testimony -- and Mr. Casey
 20 punted to you yesterday, you mentioned a number of
 21 times the formation spelled Capital Y-e-g-u-a.
 22 A Yes, sir.
 23 Q And is that pronounced Yegua?
 24 A Yegua.
 25 Q And is that the same as the Cockfield?

1 A Locally, on the Conroe field, it is the same.
 2 Yegua is a regional term, just like Jackson formation
 3 is a regional term that extends over most of the Gulf
 4 Coastal Plain.
 5 Q Good.
 6 A And, locally, it's called the Cockfield.
 7 Q So we can depend upon -- if we see "Yegua" in
 8 any prefiled testimony or exhibits that come in for
 9 this case, we can -- we can assume that it means the
 10 Cockfield.
 11 A Yes, equivalence.
 12 Q Equivalence.
 13 The surface faults, did you find any
 14 surface faults in this area?
 15 A No.
 16 Q So those faults that we're talking about in
 17 the Cockfield are strictly subterranean and are not
 18 manifested on the surface. Is that correct?
 19 A That's correct.
 20 Q Does that indicate that the salt dome is
 21 still growing or not?
 22 A It would suggest that it's not growing.
 23 Q So it is no longer mobile?
 24 A The salt, yes.
 25 Q Correct.

1 A That's right.

2 Q Okay. Mr. Forsberg quoted a passage about
3 extensive faulting allowing pressure equalization
4 within the oil strata. Does that indicate that the
5 faults that you located are laterally transmissive?

6 A No.

7 Q No. Are any of the faults laterally
8 transmissive in the area?

9 A I would say that two faults that I mapped
10 are.

11 Q Okay. Are they vertically transmissive?

12 A I think they are.

13 Q Okay.

14 A But, now, that -- if I may, that depends upon
15 where in the section that they cut.

16 Q Okay.

17 A And in order for a fault to be open,
18 transmissive, there has to be a lot of sand on both
19 sides of the faulted horizon. If there's too much
20 shale -- and by "too much," I mean 25 percent -- then
21 it tends to smear across the fault.

22 Q Okay. Mr. Walker -- I was getting confused
23 with Mr. Walker's questions to you about old and new
24 oil fields, because what I thought I saw in your
25 prefiled -- what did you understand Mr. Walker to mean

1 when he was asking you about old and new?

2 A Well, he was -- the way I understood it, he
3 was talking about the relative risk to UIC projects in
4 an old field versus a new field.

5 Q Old as in geologic time or current or 20th
6 century production?

7 A No. Old in terms of -- yeah, oil field
8 production.

9 Q Okay. So it's not an old field would be one
10 back in the '30s as opposed to today, not one in the
11 permian as opposed to the tertiary.

12 A I understood that it meant "When did the
13 drilling take place?"

14 Q Because I thought you were referring to old
15 geologic oil fields in your prefiled.

16 MR. WILLIAMS: Okay. That's all of the
17 questions I have, Your honor. Pass the witness.

18 JUDGE WALSTON: Redirect.

19 MR. RILEY: Yes, please.

20 May I approach the board?

21 JUDGE WALSTON: Yes.

22 REDIRECT EXAMINATION

23 BY MR. RILEY:

24 Q Dr. Langhus, if you'll help me draw a few
25 hypothetical features on my hypothetical diagram

1 that's been previously marked as TexCom Exhibit 68.

2 We've been talking a good portion of
3 this morning about faults.

4 A Right.

5 Q And I think I heard at least one reference in
6 your discussion of faults to major -- or maybe it was
7 minor, but either way, you distinguished between
8 faults as having a different level of significance.

9 A Right.

10 Q Could you explain a little further?

11 A A significant fault, to me, means one that
12 has a large vertical offset on either side, that it
13 has well control -- either that, or if there's no well
14 control, seismic control, something that will locate
15 the location of that -- pin down the location of that
16 fault, and that it is -- that it replicates itself in
17 several mapped horizons.

18 Q In your some 40 years of experience, have you
19 ever disagreed with another geologist of their
20 interpretation of geologic data?

21 A That's how you define a geologist, one who
22 disagrees with another geologist.

23 (Laughter)

24 Q (By Mr. Riley) I think I did find that in
25 the licensing requirements.

1 (Laughter)

2 Q (By Mr. Riley) The methodology you employ --
3 and you just explained a bit about distinguishing
4 between major and minor faults. In this particular
5 case, did you identify any faults in the area of
6 review that you consider to be -- one, to be faults
7 and, two, to be major faults?

8 A Yes, the two faults that I put on my
9 structure map of the upper Cockfield. One is just to
10 the south of the center of the AOR. It's about
11 4,400 feet south of the center. And then another one
12 at the southern edge of the AOR. Both of these have
13 significant offsets, 150 to 200 feet of offset.
14 They're cut by several wells so that there's a precise
15 location of the fault, and they have -- virtually
16 every map within the area, at least looking at the
17 Exxon submittals to the Railroad Commission, have
18 reproduced those faults.

19 Q Okay. I'm going to attempt to draw an
20 example of a fault on TexCom Exhibit 68, and by no
21 means do I intend it to be an accurate depiction of
22 true geology. It's just for representative purposes,
23 but I need your help.

24 So I'm going to start with: If a fault
25 is found, is it your experience that faults are --

1 occur at 90 degrees? In other words, should I draw a
2 perpendicular line to the plane of the formation?

3 A Not in the Gulf Coast tertiary. There's
4 usually a significant slope to the fault. I've seen
5 Exxon refer to 61 degrees. That's a reasonable
6 number. And it would be sloping toward -- as you go
7 down, sloping towards the downthrown side of the
8 fault.

9 Q Okay. I knew this was going to be more
10 complicated than I imagined, but which side -- let's
11 say this is the proposed well location. I don't mean
12 to represent any distance or draw this to scale, but
13 this well that I drew earlier is the well that has
14 been identified as Waste Disposal Well 315.

15 A Correct, and it is vertical, yes.

16 Q And so the strata that I've drawn, would they
17 be perpendicular to the wellbore or are they likely to
18 be sloped or do they have a slope to themselves?

19 A A very slight slope, essentially at right
20 angles to the borehole.

21 Q Okay. So that's a fair estimation?

22 A Certainly.

23 Q Now, you mentioned that a fault in this area
24 would likely have a slope.

25 A Right.

1 Q And that means one side -- a higher layer
2 would have -- if you looked at it on a plane --

3 A Right.

4 Q -- a two-dimensional plane and you found the
5 fault and then you looked at another two-dimensional
6 plane lower, you would find that plane in different --
7 or that fault in different spots. Correct?

8 A Yes. Yes.

9 Q And what I'm imagining in my head, at least,
10 is a slice across the fault that you can look at from
11 a bird's eye view and it -- look at it from a bird's
12 eye view and have two slices. Even though it might be
13 the same fault, it would be at different locations.

14 A Correct.

15 Q Because of the slope.

16 A Correct, if they were separated by sufficient
17 vertical distance.

18 Q Okay. So which -- regarding the closest
19 fault, which I believe Mr. Casey testified is
20 4,400 feet or in that order to the south of the
21 wellbore location, is the stratum toward the wellbore
22 on the upthrown or downthrown side?

23 A The higher strata, such as the upper
24 Cockfield, that fault would be shown closer to the
25 well than the lower Cockfield.

1 Q Okay. So -- and I may have confused you or
2 confused myself. There's upthrown and downthrown --

3 A Correct.

4 Q -- on either side of the fault.

5 A Correct. On your cartoon, the downthrown
6 side is to the right.

7 Q So -- I'm bad with left and right, but I'm
8 going to write on my right -- correct --

9 A Correct. Correct.

10 Q -- is the downthrown side?

11 A Correct.

12 Q Is it fair to represent it with just the
13 letter "D"?

14 A Exactly.

15 Q And then am I correct, also, that the
16 left-hand side would then be the upthrown side?

17 A Correct.

18 Q Should I use the letter "U"?

19 A Correct.

20 Q Now, I did not mean to imply by where I drew
21 the upthrown and downthrown side that the fault you
22 described in the application enters the Jackson shale
23 or anything more. I'm just showing the relative
24 terms.

25 A Right.

1 Q If I understood, then, correctly, the fault,
2 looking on a two-dimensional plane at a stratum --
3 well, the slope would be toward the left or toward the
4 right?

5 A As you go downwards, towards the right.

6 Q So I would -- I'm going to draw it below the
7 Jackson shale.

8 A We know that it -- or we're pretty sure that
9 it cuts the base of the Jackson shale.

10 Q How far into the Jackson shale would you say?

11 A Quarter of an inch.

12 Q Quarter of an inch. And what would that
13 represent in terms of feet in your opinion?

14 A Around 100 feet.

15 Q And I'm not going to even attempt to draw 61
16 degrees, but --

17 A Right.

18 Q -- I'll just draw a slope. How far -- how
19 deep should I go?

20 A Perhaps to the Cockfield shale. Like that.

21 Q Fair enough so far?

22 A (Witness nods head)

23 Q All right. And let me just extend the lines
24 of the pre-drawn formation out, then, to that fault.
25 Is that --

1 A Correct.
 2 Q -- appropriate?
 3 Okay. Now, on the downthrown side, am I
 4 correct that I would draw those same lines
 5 representing the various formations lower --
 6 A Correct.
 7 Q -- on the board than on the upthrown side?
 8 A Correct.
 9 Q Okay. What is the offset or the -- what is
 10 the distance, the fault, in your opinion?
 11 A They do vary somewhat, but in the upper
 12 Cockfield, the offset is about -- is between 150 and
 13 200 feet.
 14 Q Okay. So I'm going to try to represent --
 15 how thick is the upper Cockfield?
 16 A 300 feet.
 17 Q All right. So if I drew it about the middle
 18 of the upper Cockfield, that would be a rough --
 19 A That would be pretty close.
 20 Q So that means that the Jackson shale has
 21 dropped down, so to speak, into the sand layer of the
 22 upper Cockfield. Is that correct?
 23 A Correct. Correct.
 24 Q So if I write "Jackson" over here on this
 25 side, is that correct?

1 A (Witness nods head)
 2 Q And before we go lower, could you explain why
 3 I shouldn't continue with the fault line up to the top
 4 of the Jackson shale?
 5 A There's no evidence for it and the shale
 6 itself is -- has such -- has such low strength that I
 7 would be -- I would be amazed if the fault could
 8 propagate through the shale.
 9 Q You mentioned -- I think you used the term
 10 "well control." What are you referring to when you
 11 talk about "well control"?
 12 A For a fault, well control by -- I mean --
 13 "well control," that a well has cut the fault, and so
 14 you can see that there is a certain amount of vertical
 15 section that's missing in that fault.
 16 Q All right. So if I -- again, just,
 17 hypothetically, if I had a well, say, on the north
 18 side of the fault and a well, say, on the south side
 19 of the fault, would I find differences in the wellbore
 20 in terms of geology?
 21 A You wouldn't -- it depends on the age of the
 22 faulting, but you wouldn't normally see differences in
 23 the geology on either side unless the fault cut --
 24 unless the fault was cut by the well.
 25 Q Okay. And "cut by the well" is what I'm

1 struggling with. What does that mean?
 2 A Well, if you had a vertical well, say,
 3 between the U and the D, it would presumably cut that
 4 fault somewhere in the middle Cockfield, and so --
 5 Q Okay. So it would actually cross the fault?
 6 A Right. Right. So it would go from the
 7 downthrown side to upthrown side and there would be
 8 something like 150 or 200 feet of section missing.
 9 Q All right. And in this field, is there well
 10 control?
 11 A There is. On these -- on the two major
 12 faults, yes.
 13 Q Okay. Well, could you explain a little bit
 14 further what you looked at and what you're referring
 15 to?
 16 A These were fault cuts either noted by Exxon
 17 on wells or actually seen by me in looking at well
 18 logs.
 19 Q Okay. So that information gave you
 20 confidence that the fault I've drawn or depicted on
 21 this diagram actually is there and exists?
 22 A Correct.
 23 Q And I think you've explained at least why you
 24 think it doesn't penetrate the Jackson shale. Could
 25 you go over that again?

1 A It's a matter of strength of the shale. The
 2 shale itself has a consistency. It's not a rock; it's
 3 a semisolid material. And it does not have the
 4 strength to propagate a break such as a fault.
 5 Q There are regions of the country -- you were
 6 asked a number of questions about different regions of
 7 the country being better or worse suited for a UIC
 8 well. So that leads me to believe you've had
 9 experience in the field of geology in other areas of
 10 the country.
 11 Are there different types of rocks that
 12 would propagate a fault up to different layers or two
 13 different layers?
 14 A Certainly. Certainly. An older rock such as
 15 the Permian that Mr. Williams was talking about -- the
 16 Permian of the Texas Panhandle, those are real rocks,
 17 and they have the ability to propagate faulting for
 18 many hundreds and perhaps thousands of feet.
 19 Q And I think geologists sometimes appreciate
 20 rocks different from other folks. If I held a piece
 21 of the Jackson shale in my hand, would I think of it
 22 as a rock or would I think of it as a porridge-like
 23 substance?
 24 A If it was a fresh piece right out of a core,
 25 it would -- you would think of Play-Doh.

1 Q And you've mentioned earlier in someone's
2 questioning that this material can smear or -- I think
3 that's the term you used.

4 A Correct.

5 Q Is that correct?

6 A Correct.

7 Q And what significance does that smearing
8 effect have?

9 A Well, if there's sufficient shale on both
10 sides -- or on either side of the fault, the clay
11 material within the shale will smear across the fault
12 plane, and that smearing will, of course, retard any
13 kind of transmission of fluids through the fault
14 plane.

15 Q Let me go down to some of the other layers
16 here and see if I can illuminate that a little
17 further.

18 Mr. Casey talked about a shale layer
19 between the upper and the middle Cockfield -- well,
20 before I go on. Do you know the depth or -- excuse
21 me, the width -- wrong term -- thickness of the
22 Jackson shale in the area of review?

23 A 1,088.

24 Q 1,088 feet?

25 A Yes.

1 Q So if I've drawn in that dimension for the
2 Jackson shale in my cartoon, which, I've got to tell
3 you, I don't like that term, but I'll call it that --

4 (Laughter)

5 Q (By Mr. Riley) -- that is a fair
6 representation of the thickness of the Jackson shale
7 in your opinion?

8 A In the WDW-315.

9 Q All right. And that's from an actual
10 analysis or evaluation of the boring log.

11 A Right.

12 Q Is that correct?

13 All right. Moving down to the shale
14 layer between the upper and the middle Cockfield --
15 first of all, do you agree that it exists --

16 A Yes.

17 Q -- through the shale?

18 A Yes.

19 Q And do you have approximation or --

20 A 30 feet.

21 Q 30 feet. It's a little hard to draw in here,
22 but -- and I'm going to represent that on the
23 downthrown side of the fault, just for representation
24 purposes, throughout the middle of the middle
25 Cockfield.

1 A Right.

2 Q Is that correct?

3 A Right.

4 Q How thick is the middle Cockfield?

5 A It's approximately 400 feet.

6 Q And I didn't ask you -- or maybe I asked you
7 but I didn't write it down, how thick is the upper
8 Cockfield?

9 A About 300 feet.

10 Q And this is all from your analysis or review
11 of the boring logs?

12 A Correct.

13 Q And, finally, is it okay for me to just draw
14 the other layers, then, sequentially --

15 A Right.

16 Q -- as a representation?

17 In a crude, lawyer fashion, have I
18 developed a reasonable depiction of what you as a
19 geologist would say is an approximation of the stratum
20 that we've been discussing?

21 A Yes, sir.

22 Q Now, with respect to the shale layer -- the
23 30-foot shale layer between the upper and the middle
24 Cockfield, could that shale layer -- or would it be
25 appropriate to discuss smearing in the context of that

1 shale layer?

2 A I don't think so. That's a fairly minor --
3 the 30-foot shale in comparison to 300 feet or
4 400 feet of sand is not -- I don't think that's a
5 major force in affecting the permeability.

6 Q All right. I think I asked also, but I
7 didn't write it down again, the throw of this fault is
8 approximately?

9 A Between 100 and 150 feet.

10 Q I'm going to try to represent that here by
11 writing sideways.

12 Is that -- are you at least able to
13 follow what I'm trying to depict --

14 A Yes.

15 Q -- on the diagram?

16 All right. So now we have the first
17 fault we come to in your analysis -- and is that the
18 most significant fault or considerations that we've
19 been discussing in this case?

20 A Yes, sir.

21 Q And is it your opinion that the fault that
22 I've depicted, this is 4,400 feet from the Waste
23 Disposal Well 315?

24 A Correct.

25 Q I'm going to write that down.

<p style="text-align: right;">Page 423</p> <p>1 (Brief Pause)</p> <p>2 Q (By Mr. Riley) Fair?</p> <p>3 A Uh-huh.</p> <p>4 Q All right. Now, you heard Mr. Casey testify</p> <p>5 that the plume radius, considering that fault is</p> <p>6 transmissive, would extend to 2,770 feet and that he</p> <p>7 considered that the conservative way to model the</p> <p>8 reservoir considering the permeability -- relative</p> <p>9 permeabilities of the other sands.</p> <p>10 A Correct.</p> <p>11 Q And do you agree with that?</p> <p>12 A I do.</p> <p>13 Q Now, am I correct, then, that under that</p> <p>14 modeling, at least, the plume radius does not reach</p> <p>15 the 4,400-foot fault?</p> <p>16 A Correct.</p> <p>17 Q And that's a plume radius of 30 years.</p> <p>18 Correct?</p> <p>19 A Correct, assuming 24/7 operation, et cetera.</p> <p>20 Q With all the conservatisms that Mr. Casey</p> <p>21 discussed in his modeling?</p> <p>22 A Right.</p> <p>23 Q Now, if I'm also correct, the -- we had six</p> <p>24 wells in the cone of influence. From a geologist's</p> <p>25 perspective, could you explain the significance of a</p>	<p style="text-align: right;">Page 425</p> <p>1 the Jackson shale is enhanced or I guess verified by</p> <p>2 the history of oil production in the Conroe field.</p> <p>3 Did I understand that correctly?</p> <p>4 A Correct.</p> <p>5 Q Could you explain that further?</p> <p>6 A Although the Conroe field is an old field in</p> <p>7 terms of some kind of -- some kind of context -- it's</p> <p>8 older than me, for instance.</p> <p>9 (Laughter)</p> <p>10 A But it's not as old as other fields in Texas</p> <p>11 or in the United States, and so there's -- there are</p> <p>12 certain advantages to that. For instance, the fact</p> <p>13 that casings -- surface casing and production casing</p> <p>14 are oil field steel -- they're not wood, for</p> <p>15 instance -- that by the '30s cement was used</p> <p>16 throughout the oil business for plugging old wells and</p> <p>17 for setting casing. Mud was used in the drilling of</p> <p>18 mud -- of holes. There -- in this area, anyway, cable</p> <p>19 tools were not used. So there's a number of</p> <p>20 advantages.</p> <p>21 For one thing, they -- by this time, the</p> <p>22 state government had made them survey the locations of</p> <p>23 the wells; whereas, in the teens, it was kind of,</p> <p>24 "Well, it's somewhere over here" sort of thing. So</p> <p>25 there's a real advantage to old fields that are only</p>
<p style="text-align: right;">Page 424</p> <p>1 cone of influence for purposes of your evaluation of</p> <p>2 this application?</p> <p>3 A What I looked at was the cone of influence</p> <p>4 and the -- as being the -- that part of the area of</p> <p>5 review that -- with some extremely conservative</p> <p>6 assumptions, that this would have the sufficient</p> <p>7 pressure build-up within the lower Cockfield that it</p> <p>8 would be able to begin to break down mud plugs in old</p> <p>9 boreholes. And so that's what -- that's what I looked</p> <p>10 at -- that's what I look at when I look at a cone of</p> <p>11 influence.</p> <p>12 Q All right. And as I've written up here,</p> <p>13 according to Mr. Casey's analysis and all the things</p> <p>14 that have been discussed with Mr. Casey and your</p> <p>15 previous answer, the cone of influence is 750 feet.</p> <p>16 Correct?</p> <p>17 A Correct.</p> <p>18 Q Am I correct, then, based on -- well, let's</p> <p>19 go a different direction for a second.</p> <p>20 There were questions about the history</p> <p>21 of the Conroe formation, I believe, by -- primarily by</p> <p>22 Mr. Walker about the age of the field, "Is it an old</p> <p>23 oil field," and there were a variety of questions</p> <p>24 there. But somewhere in that discussion you explained</p> <p>25 that your confidence regarding the confining nature of</p>	<p style="text-align: right;">Page 426</p> <p>1 as old as the Conroe.</p> <p>2 Q So by the '30s, there were -- there was some</p> <p>3 level of sophistication to the oil business even back</p> <p>4 in those days?</p> <p>5 A I don't know if I'd say "sophistication,"</p> <p>6 but, yes, there was certainly a degree of practice.</p> <p>7 Q And I think somewhere in the discussion with</p> <p>8 Mr. Walker he talked about having -- the field having</p> <p>9 a common operator for some number of years.</p> <p>10 A Correct.</p> <p>11 Q Could you explain further what that means?</p> <p>12 A Well, in the early part of the -- it was</p> <p>13 discovered by -- in 1931 by another operator, but very</p> <p>14 shortly after that, Humble was able to assume most of</p> <p>15 the operations within the field. And sometime in the</p> <p>16 early '70s, the field was unitized with Exxon as the</p> <p>17 operator over the whole field.</p> <p>18 Q And how would common ownership or control</p> <p>19 factor into the discussion you were having with</p> <p>20 Mr. Walker about the artificial penetrations and the</p> <p>21 reliability of records? If you have an opinion.</p> <p>22 A My opinion -- my history is that if there was</p> <p>23 a common operator, then the integrity of the records</p> <p>24 would be maintained a great deal more than if the</p> <p>25 field was changing hands every two or three years</p>

1 among smaller companies.
 2 Q So ExxonMobil Corporation, I believe it's
 3 called now, until very recently, tracing back to
 4 Humble Oil Corporation, was a continuous ownership.
 5 Is that --

6 A Correct.

7 Q -- your understanding?

8 A Correct.

9 Q Back to geology. Am I -- did I understand
 10 correctly that -- well, let's go to a different topic
 11 for just a second.

12 Did you hear the discussion that I had
 13 with Mr. Casey this morning regarding the fall-off
 14 test?

15 A Correct.

16 Q And what is your understanding of the
 17 parameters of fall-off test, how it's done and what it
 18 can demonstrate?

19 A Being a geologist, I don't have -- I've got
 20 some experience with fall-off testing, but I do not
 21 have the ability to manipulate that data to make any
 22 inferences myself. But in my years in the oil
 23 business, I have seen them used not only to get -- to
 24 get a different look at permeability, at average
 25 permeability within a zone. That is, commonly, I work

1 with wireline data that sometimes has permeability
 2 data on them and frequently with core data. But cores
 3 are usually very short and wireline data is -- usually
 4 has its own limitations.

5 So I can say, for instance, that in a
 6 certain part of the second upper Cockfield sand, that
 7 that, locally, has a permeability of 900 millidarcies
 8 because there was a core cut there, but the rest of
 9 the sands in the Cockfield I really don't know about
 10 because I don't have any core there. Well, a fall-off
 11 test can give you some averaged -- some cumulative
 12 information over a longer interval.

13 Q And you heard the discussion about the
 14 penetration that TexCom plans to make as different
 15 from the fall-off test -- or excuse me, the
 16 penetration that was present at time of the fall-off
 17 test that's been the subject of some discussion in
 18 this case.

19 A Correct.

20 Q How about the portion of Mr. Casey's
 21 testimony regarding the investigation distance from
 22 the wellbore in the fall-off test? Do you have --

23 A Yes --

24 Q -- any experience in that regard?

25 A -- I have, and I've seen some fall-off tests

1 that give good corroboration to geological features
 2 that I've mapped.

3 Q And at least as it pertains to this single
 4 fall-off test which Mr. Casey said indicated -- or did
 5 not indicate -- I'm struggling for the words, but did
 6 not indicate faulting or an obstruction or something
 7 of that nature, that that was some -- that went out
 8 1,500 feet from the wellbore.

9 A Correct.

10 Q And that's consistent with your analysis of
 11 the faulting in the area?

12 A It is.

13 Q The fault that we've been discussing and I've
 14 depicted on the diagram 4,400 feet away from the
 15 wellbore, WDW-315, let's talk about it in terms of
 16 hydrocarbon production in the field. Is there some
 17 significance to the fault that you've -- in other
 18 words, let's talk about artificial penetrations. As
 19 it pertains to oil and gas production in the Conroe
 20 area, are there more or less oil and gas penetrations
 21 to the south of the fault?

22 A There are more.

23 Q And so if I -- and the south is to the
 24 right-hand side of the page. Is that correct?

25 A Correct.

1 Q Let me write "South." And "North," I'll just
 2 write on the left-hand side.

3 And what is your opinion as to why that
 4 might be, if it has any bearing at all on the fault
 5 that we've depicted?

6 A Whether or not it has anything to do with the
 7 fault or not, but it's -- the culmination of the dome,
 8 the highest part of the dome is to the right of the
 9 map. It's south of the AOR, area of review, and so
 10 the -- just the natural buoyancy of the oil and gas
 11 floating on top of the saltwater that's in all of
 12 those sands would force the oil towards the
 13 culmination of the structure.

14 Q Okay. So if I write underneath "South Dome"
 15 and put an arrow to the south. Is that --

16 A That would work.

17 Q -- fair?

18 A (Witness nods head)

19 Q Does that mean that there wouldn't be oil and
 20 gas production to the north of the fault that we've
 21 been discussing?

22 A No, and there has been historical production
 23 to the north.

24 Q Okay. And in relative terms, though, where
 25 did you see more wellbores, to the south or to the

1 north?
 2 A To the south.
 3 Q Even within the area of review?
 4 A I'm not so sure of that. There isn't a lot
 5 in the area of review that's south of the fault.
 6 Q And so, at least in your recollection, the
 7 oil and gas production occurred in the area farther to
 8 the south -- or the bulk of it?
 9 A Right. Within the field itself, yes.
 10 Q Okay. The --
 11 MR. RILEY: Is this a convenient time to
 12 stop for lunch? I'm going to go to another topic and
 13 it's about ten 'till 12:00.
 14 JUDGE WALSTON: That will be fine, but
 15 let's try and keep it to an hour. So we'll go off the
 16 record and if we can come back at ten 'till 1:00.
 17 We'll resume at ten 'till 1:00.
 18 (Recess: 11:47 a.m. to 12:50 p.m.)
 19
 20
 21
 22
 23
 24
 25

1 AFTERNOON SESSION
 2 (12:50 p.m.)
 3 JUDGE EGAN: All right. We're going
 4 back on the record. It's about 10 till 1 on
 5 December 13, 2007, and, Dr. Langhus -- is that how you
 6 say it?
 7 WITNESS LANGHUS: That's correct.
 8 JUDGE EGAN: You're still on redirect.
 9 Mr. Riley, are you ready to proceed?
 10 You said there were a few housekeeping
 11 matters. Do you want to do those first?
 12 MR. RILEY: I would prefer since I have
 13 them in my head.
 14 JUDGE EGAN: That's fine.
 15 MR. RILEY: The first one is from this
 16 morning. We had an exhibit, TexCom Exhibit -- from
 17 the Railroad Commission certified records.
 18 JUDGE WALSTON: 69.
 19 MR. RILEY: I believe it's 69. We have
 20 made copies of that exhibit and distributed those just
 21 a few minutes ago. That item is taken care of.
 22 And then yesterday there were two items
 23 that we said we would like to review and would get
 24 back to the Judges on whether we had an objection. I
 25 think we called it subject to verification.

1 JUDGE EGAN: It was Lone Star
 2 Exhibit 17, 18, and actually, 19. There were three.
 3 MR. RILEY: One, if I'm following along
 4 correctly, I believe 17 was the docket sheet from the
 5 engineering board.
 6 JUDGE EGAN: Yes.
 7 MR. RILEY: And we have verified that
 8 that is, in fact, from the engineering board, so we
 9 withdraw any remaining objection to that.
 10 JUDGE EGAN: Thank you.
 11 MR. RILEY: 18 is a -- some documents
 12 that were produced which are entitled Reservoir
 13 Modeling with a blank cover sheet on the front.
 14 Again, that is verified that was produced in our
 15 document discovery.
 16 JUDGE EGAN: The April 12th letter from
 17 TCEQ is Lone Star No. 19. Do you still need more time
 18 for that one?
 19 MR. RILEY: Apparently so.
 20 JUDGE EGAN: All right.
 21 MR. RILEY: I didn't have that one as
 22 still in question. That's the TCEQ letter?
 23 JUDGE EGAN: Yes, the April 12th,
 24 2007 letter from TCEQ. And that's all I had that you
 25 needed to have verified.

1 Are you ready to proceed with your
 2 redirect?
 3 MR. RILEY: Yes, Your Honor. Thank you.
 4 JUDGE EGAN: Go ahead.
 5 PRESENTATION ON BEHALF OF THE APPLICANT
 6 (CONTINUED)
 7 BRUCE LANGHUS,
 8 having been previously duly sworn, testified as
 9 follows:
 10 REDIRECT EXAMINATION (CONTINUED)
 11 BY MR. RILEY:
 12 Q Good afternoon, Dr. Langhus.
 13 A Good afternoon.
 14 Q I would like to start this afternoon's
 15 discussion about the materials you reviewed as part of
 16 your preparation of your geologic portion of the
 17 TexCom application as well as some terms you used, or
 18 I think would be helpful to the Judges to describe in
 19 this case.
 20 So the first one I would like to begin
 21 with is horizon. I know you were asked questions
 22 about certain fault information, and I believe you
 23 referred to "horizon" as -- in one of your answers.
 24 What is a horizon and what are you referring to?
 25 A A horizon is a surface contact, such as the

1 lower contact of the Jackson shale where it touches
 2 the upper Cockfield would be a horizon.
 3 Q And those horizons are mapped on occasion.
 4 Is that correct?
 5 A Yes.
 6 Q And that's one way of indicating a fault, is
 7 showing a horizon and a fault on a horizon?
 8 A Correct.
 9 Q And if you took a certain horizon map -- is
 10 that a three-dimensional picture or is that a
 11 two-dimensional picture?
 12 A It's really just a two-dimensional picture.
 13 The horizon doesn't have thickness.
 14 Q So if I looked at a bird's eye view, again,
 15 and let's say for purposes of our discussion we're
 16 looking at the area of review, and I look down as a
 17 bird might, and I could see through the earth; of
 18 course, that would be another requirement, and I look
 19 into a certain depth, that would be a horizon, and I
 20 would see a line across that horizon which could be
 21 indicative of a fault?
 22 A Correct.
 23 Q And is that the type of information that you
 24 reviewed and you referred to in your cross-examination
 25 as some of the Exxon mapping, some of the other maps

1 you've reviewed?
 2 A Correct.
 3 Q Now, are there -- is there information that
 4 you reviewed in this case that indicates a horizon was
 5 mapped and indicated a fault line or a fault, and then
 6 another horizon was mapped and did not indicate that
 7 same fault line or fault?
 8 A Correct.
 9 Q And could you explain to the Judges what that
 10 might indicate or what in your opinion it would
 11 indicate?
 12 A What that indicates is that the geologist
 13 making each of those maps made an interpretation from
 14 his data and interpreted, or did not interpret, a
 15 fault, because a great many of these faults are
 16 interpretive; that is, they don't have -- they don't
 17 have hard evidence for their location and vertical
 18 offset.
 19 Q Can we use the term "interpretive fault"?
 20 A Yes.
 21 Q Is that something that you've heard in your
 22 profession?
 23 A Yes.
 24 Q And are there various ways for geologists to
 25 look at a set of data and interpret that there is

1 potentially a fault in an area?
 2 A Yes.
 3 Q Could you explain those to the Judges?
 4 A The easiest way to explain it is if I have a
 5 map that has a great deal of well control on it, that
 6 is, it has information as to the depth of a horizon,
 7 like the top of the upper Cockfield, I would then
 8 contour that to come up with a structure map, and if I
 9 see strong contrasts in that contour map, I might want
 10 to interpret a fault, or I might not want to interpret
 11 a fault based on my experience and my interpretation
 12 of the rest of the information in that area.
 13 So if I knew, for instance, that this
 14 part of Kansas had a lot of faulting, I might want to
 15 put in a fault. If I knew, on the other hand, that
 16 this was -- that this was quite a quiescent part of
 17 Kansas and nobody else had interpreted a fault, I
 18 didn't have any seismic that showed a fault, I would
 19 then contour it differently.
 20 Q And you're using Kansas as a hypothetical, in
 21 case folks have joined us this afternoon and think
 22 we're talking about a well in Kansas.
 23 A Right. Right.
 24 Q The issue then is you can look at the same
 25 data and knowing something else about the geology, a

1 geologist might make an interpretation of a fault,
 2 whereas another geologist might see it differently or
 3 not agree that there's a fault?
 4 A Exactly.
 5 Q And the -- what is the most reliable -- I
 6 think you described it earlier today -- most reliable
 7 way of detecting a fault?
 8 A Most reliable is an intersection -- a cut in
 9 a borehole -- a well through the fault.
 10 Q And in the particular geologic strata that
 11 we've been discussing in this case, if I were to find
 12 a fault even through a borehole or through drilling
 13 into the earth, would that indicate that I could find
 14 that same fault at lower strata?
 15 A It may or it may not.
 16 Q So even if I was to look at boring log data
 17 or boring data, I would still have to have more data
 18 in order to interpret that the fault proceeds through
 19 other layers or other strata?
 20 A Correct.
 21 Q I think you talked about, at least as it
 22 pertains to the major fault to the south of the well
 23 site that you've described and is described in the
 24 application, that there are Exxon -- the Exxon
 25 materials that you've looked at indicated other types

1 of faults. I think if you could explain that, it
2 would be helpful.

3 A There were some of the interval or horizon
4 maps that Exxon has used in the 70-some years that
5 they've worked on this field, some of them did have
6 interpretive faults shown in the field.

7 Q And you observed that in your preparation
8 for -- preparation of the application?

9 A Correct.

10 Q And you didn't list those in the application,
11 and what's your reasoning there?

12 A My interpretation, my opinion -- my
13 professional opinion is that those faults were not --
14 were not present in the subsurface because the
15 evidence that was shown on the Exxon maps indicated
16 that there was either no throw on the fault, in which
17 case this is not -- there is no evidence for the
18 fault, or else the evidence -- interpretive evidence
19 was not consistent throughout the Cockfield sands.

20 So, in other words, it might be present
21 in one layer, but the next layer down was not present
22 on an Exxon map. I interpret that or I would -- my
23 opinion is that these were strictly interpreted by
24 Exxon geologists and the fact that two geologists
25 making two maps separated by only a few vertical feet,

1 if one doesn't see it, the other one does, probably
2 the fault is not real.

3 Q Now, how is it then -- well, let me ask it a
4 different way.

5 Did the Exxon maps, the ones you relied
6 on and reviewed in preparation of the application and
7 for your testimony, consistently indicate the major
8 fault that is out of the well site that you've
9 testified about and that's depicted on the diagram?

10 A Yes, sir. Yes, sir. They not only depicted
11 it in -- consistently in terms of one generation of
12 mappers, that is, the '72, the '77, '79, the '96,
13 those generation of mapping, but there was a marked
14 consistency from the highest Cockfield interval to the
15 lowest.

16 Q There were a number of questions about the
17 age of the Conroe field and the well bores that might
18 be out there and the fact that many of those well
19 bores might not have been closed properly or may not
20 have even been completed properly -- what we consider
21 properly by today's standard perhaps --

22 A Right.

23 Q -- no pipe or no mud or whatever.

24 Speculate with me, if you would -- or,
25 actually, more than speculation. Would you give me

1 your opinion as to whether a wellbore into the Jackson
2 shale, for instance, would remain open if those were
3 the circumstances?

4 A If there was no casing across the Jackson,
5 the hole would not remain open for any appreciable
6 amount of time.

7 Q For geologists, "appreciable amount of time"
8 may be different for regular people. No offense,
9 Doctor, but what is an appreciable amount of time?

10 A Several years.

11 Q So we're not talking several thousands of
12 years?

13 A No, no.

14 Q So if Mr. Walker's questioning about these
15 wellbores that may have been drilled and may have been
16 abandoned and may not have been properly maintained,
17 if those were out there, which I don't think there's
18 been any evidence of, but if they were out there, what
19 would your expectation be as it pertains to the
20 sealing feature that you've described in the Jackson
21 shale?

22 A The holes through the Jackson would collapse.
23 The shale would collapse into the hole making the hole
24 non-transmissive in a vertical sense.

25 Q Now, this pertains to some degree, I think in

1 your answer to Mr. Walker, if he drilled holes in a
2 piece of lead or a wafer of lead.

3 A Correct.

4 Q So lead would act differently from what you
5 described the Jackson shale?

6 A Of course.

7 Q As part of your review, in preparation for
8 this case, did you consider other types of waste
9 disposal wells that are in the area of the proposed
10 TexCom well of any type?

11 A Well, I certainly did consider the Class II
12 disposal wells that are in the area, yes.

13 Q And there were questions about a USDW and the
14 regulatory definition of a USDW and your
15 interpretation of what a buffer might be above the
16 Jackson shale. Correct?

17 A Correct.

18 Q So to orient our discussion, at least, we're
19 talking in strata that are above the strata depicted
20 on Applicant's Exhibit 68 about the formations above
21 the Jackson shale?

22 A Correct.

23 Q And if you're correct about the confining
24 nature of the Jackson shale, then the discussion is
25 somewhat irrelevant to consideration of the TexCom

1 well, but with that caveat, let's talk about what
2 other activities occur above the Jackson shale, if
3 you've reviewed any types of records.

4 A There are -- at the present time, there are
5 54 permits for Class II injection wells, and the Class
6 II permit -- or the Class II program under the Safe
7 Drinking Water Act consists of those wells -- those
8 UIC wells that dispose of oil and gas primary wastes.

9 This usually means produced water and
10 flow back from well treatments, frac jobs, acid jobs,
11 that kind of thing. So it's simply those liquid
12 wastes that come from exploration, production of oil
13 and gas. It's a source exemption. It's not -- it
14 doesn't say anything about the relative toxicity or
15 anything else about the waste. It's simply saying
16 that these wastes are -- come from oil and gas wells,
17 and they can be disposed into Class II disposal wells,
18 and like I say, there are 54 permits that are
19 issued -- that are issued to Wapiti right now in the
20 area of the Conroe dome. The last time we talked to
21 them, they were using 43 of them, but this was several
22 months ago. That might have changed.

23 Q I'm sorry. There's a bunch of things in your
24 answer. I want to draw out several items.

25 The first is, what is a frac job?

1 A A frac job is when the operator of a well is
2 displeased with the way his well is operating, is
3 producing fluid. And so he will go in there and
4 pressure up on the formation and use some sort of
5 chemicals to break down the formation near the
6 borehole. This will allow then more liquids to come
7 toward the borehole and be pumped to the surface.

8 Q I think you mentioned the word "acid," and I
9 don't know if it was an "acid job" or something of
10 that nature, but something to do with acid.

11 A Correct. It's the same kind of thing. This
12 doesn't happen so much in the Gulf Coast, but with --
13 in harder formations where you have limestones,
14 dolomites, things like that, you might want to use
15 some acids in the treatment job to further break down
16 the well or break down the formations near the well.

17 Q Are there other types of well reworking
18 activities that would involve chemicals that are not
19 needed, so to speak, not found in the oil or gas layer
20 or otherwise found in the formation where these
21 materials are injected through Class II wastes?

22 A Yes, there could be, and the treatment
23 companies, such as Halliburton, Schlumberger, et
24 cetera, are thinking up new sorts of treatments every
25 day to sell to oil and gas operators.

1 Q So new types of treatments involving
2 chemicals for oil and gas wells that oil and gas
3 producers might avail themselves of in reworking a
4 particular well?

5 A Correct.

6 Q And that those wastes then would be
7 considered part of the exploration and production
8 exception and be available for disposal in the 54 or
9 53 Wapiti wells?

10 A Correct.

11 Q As between the Wapiti wells where they are
12 injected, do you know that depth?

13 A Between about 2,800 feet and the top of the
14 Jackson, 4,088.

15 JUDGE EGAN: What is the depth again?
16 I'm sorry.

17 A About 2,800 feet to, let's say, 4,088, and
18 that includes the Frio sands and the Vicksburg sands.

19 Q (By Mr. Riley) The methodology, so to speak,
20 between injecting into a Class II well and a Class I
21 well, are they essentially the same in terms of
22 equipment used and things of that nature?

23 A Very much.

24 Q Are their requirements the same --

25 A No.

1 Q -- in terms of regulatory oversight?

2 A No. There are much stronger requirements for
3 the Class I.

4 Q And who presides, if you know, in the state
5 of Texas over Class I wells?

6 A That would be the Railroad Commission.

7 Q When Mr. -- I think it was Mr. Walker; at
8 least I hope I'm remembering that correctly -- asked
9 you about a buffer zone, is the description you just
10 gave of the activities of oil and gas production or
11 producers some part of your reasoning?

12 A Yes, yes. It's exactly that reasoning, that
13 the bottom part of the USDW at the proposed injection
14 well is being used for disposal of Class II wastes,
15 and it's also producing oil and gas in commercial
16 quantities. That would make this zone a perfect
17 buffer zone.

18 Q Now, explain to the Judges, if you would, why
19 it is, if I'm understanding the testimony correctly,
20 above the Jackson shale -- as I understand it, many of
21 the concerns in this case involve freshwater or
22 drinking water sources in the formations above the
23 Jackson shale. Do you understand that?

24 A Correct.

25 Q And in what formation are those drinking

<p style="text-align: right;">Page 447</p> <p>1 water sources found?</p> <p>2 A They're mostly found in what's called the</p> <p>3 Gulf Coast aquifer system, the GCAS.</p> <p>4 Q Can you recall the names of those aquifers?</p> <p>5 A No.</p> <p>6 Q And where are they in relationship to the</p> <p>7 Vicksburg -- is it the Vicksburg?</p> <p>8 A The Vicksburg and the Frio. They're beneath</p> <p>9 that.</p> <p>10 Q So the --</p> <p>11 JUDGE WALSTON: Who is beneath who?</p> <p>12 A Oh, the Gulf Coast aquifer system is above</p> <p>13 the Vicksburg and Frio. The Vicksburg and Frio, the</p> <p>14 disposal zones would be below that.</p> <p>15 Q (By Mr. Riley) Is there a confining layer,</p> <p>16 as far as you know, between the Frio and, say, the --</p> <p>17 let's go with me that the Jasper aquifer is the next</p> <p>18 uppermost.</p> <p>19 A Yes, yes, there are confining shales</p> <p>20 separating them.</p> <p>21 Q And would you expect that to be true of the</p> <p>22 aquifers above the Jasper?</p> <p>23 A I would, yes.</p> <p>24 Q Is there some basis for your opinion that you</p> <p>25 could explain to the ALJs?</p>	<p style="text-align: right;">Page 449</p> <p>1 JUDGE EGAN: Mr. Walker?</p> <p>2 MR. WALKER: Yes, Your Honor, I do have</p> <p>3 a question or two.</p> <p>4 RECROSS-EXAMINATION</p> <p>5 BY MR. WALKER:</p> <p>6 Q Dr. Langhus, I believe that you essentially</p> <p>7 stated that different geologists can interpret fault</p> <p>8 information differently?</p> <p>9 A Yes.</p> <p>10 Q And it occurred to me that perhaps you were</p> <p>11 suggesting that certainly based on information that</p> <p>12 geologists or hydrogeologists might study that these</p> <p>13 interpretations could be at least somewhat subjective</p> <p>14 as to the conclusions that they might find or render.</p> <p>15 A Depending upon the geological or hydrological</p> <p>16 evidence, yes, they can be highly subjective.</p> <p>17 Q Very good. Would that suggest to you then</p> <p>18 that if the issue is whether or not a given area has</p> <p>19 multiple faults and whether or not those multiple</p> <p>20 faults are significant, one geologist could say</p> <p>21 "Perhaps not, and here is why," and another geologist</p> <p>22 could say, "Absolutely significant, and here is why"?</p> <p>23 A Exactly. The telling is in the "here's why."</p> <p>24 Q I believe, Dr. Langhus, in your testimony so</p> <p>25 far; certainly in your prefled testimony and your</p>
<p style="text-align: right;">Page 448</p> <p>1 A Well, they just -- the variation in salinity</p> <p>2 would certainly -- would certainly argue for a</p> <p>3 significant barrier between them, and also the fact</p> <p>4 that the Railroad Commission has permitted those</p> <p>5 injection -- those disposal wells into the bottom part</p> <p>6 of the USDW argues that there is a significant</p> <p>7 barrier.</p> <p>8 Q If I understand your testimony correctly,</p> <p>9 above the Jackson shale, if there's some means or</p> <p>10 mechanism unknown at this time, any of the injected</p> <p>11 material that TexCom proposes found its way above the</p> <p>12 Jackson shale would first have to rise above the</p> <p>13 Vicksburg, above the Frio, with the waste disposal</p> <p>14 wells that you've described of the current operator --</p> <p>15 A Right.</p> <p>16 Q -- holds permits to before it would ever</p> <p>17 reach a drinking water source. Is that correct?</p> <p>18 A Correct.</p> <p>19 MR. RILEY: Thank you. I have no</p> <p>20 further questions.</p> <p>21 JUDGE EGAN: That was redirect. Recross</p> <p>22 on the redirect, Mr. Hill?</p> <p>23 MR. HILL: One second, Your Honor.</p> <p>24 (Brief pause)</p> <p>25 MR. HILL: No questions, Your Honor.</p>	<p style="text-align: right;">Page 450</p> <p>1 testimony here today -- correct me if I'm wrong -- I</p> <p>2 believe I noted an absence of any reference by you to</p> <p>3 the 1975 study of the Conroe field authored by R. E.</p> <p>4 Whitson, W. A. Burns, Jr., and W. J. Davies. Is that</p> <p>5 correct?</p> <p>6 A I did look at it, yes.</p> <p>7 Q All right. Certainly you did not include it</p> <p>8 in your prefled testimony?</p> <p>9 A No, I don't believe I included any</p> <p>10 information on it.</p> <p>11 Q Would that be one of the pieces of</p> <p>12 information that you previously testified to that you</p> <p>13 claim that you looked at but simply did not list as</p> <p>14 one of the major items that you considered?</p> <p>15 A Correct.</p> <p>16 Q Now, if that study indicated that the Conroe</p> <p>17 field is highly faulted and if that study indicated</p> <p>18 that the field was divided into 144 fault blocks and</p> <p>19 member study units by the authors of that study, would</p> <p>20 you consider that to be, at least to some extent, a</p> <p>21 subjective analysis of the Conroe field?</p> <p>22 A Certainly, certainly.</p> <p>23 Q And if that study suggested or said, "There</p> <p>24 are probably three paths of communication between</p> <p>25 sands: Juxtaposition across faults, the fault planes</p>

<p style="text-align: right;">Page 451</p> <p>1 themselves and behind well casing caused by breakdown 2 of primary cement," would you suggest that that kind 3 of description or analysis was at least somewhat 4 subjective on the part of the authors of the study? 5 A It would probably be subjective, but I would 6 guess that Exxon had some definite examples of -- and 7 I know, for instance, as far as breakdown of casing, 8 things like that, I know that Exxon did some 9 remediation within the field to correct those things, 10 yes. So that they're -- that certainly is something 11 that has occurred in the Conroe field. 12 Q All right. Consequently, Dr. Langhus, if we 13 have, in this case a hydrogeological expert such as 14 yourself who believes the evidence of faulting in the 15 area of review has been sufficiently designated and 16 eliminated as an area of concern, and if we have 17 another geological/hydrogeological expert that says, 18 based on that person's research, it's a highly faulted 19 uncertain area, if you will -- my term -- would you 20 agree with me if you have those competing definitions 21 and competing assertions that we would at least have 22 some degree of uncertainty as to the true nature of 23 the stability of the area of review? 24 A I think you have to look at where I was 25 looking at, which is the area of review, and where the</p>	<p style="text-align: right;">Page 453</p> <p>1 start putting industrial wastes in the ground, 2 certainly. 3 Q Dr. Langhus, let me ask you, with respect to 4 the safety and integrity of the groundwater here in 5 Montgomery County, what if you're wrong? 6 A What if I'm wrong? I think there are 7 enough -- there's enough data, there's enough 8 conservatism built into my analysis that that will be 9 covered, that the -- that the water within the water 10 wells in the area will be sufficiently protected. 11 Q And given, Dr. Langhus, the subjective nature 12 of your research and opinion, as opposed to another 13 hydrogeologist's subjective opinion, given that 14 person's analysis, if you are wrong, would the 15 placement of this well be in the best interest -- the 16 public interest of the citizens of Montgomery County? 17 A I think with the engineering safeguards, that 18 is, the safeguards on the injection rate and pressure, 19 that, yes, it will be sufficiently protected. 20 Q Let me ask you one other question. If there 21 is more faulting than what you believe exists, and if 22 that faulting -- let me back up. 23 Some faults are laterally transmissive 24 and some are not. Correct? 25 A Correct.</p>
<p style="text-align: right;">Page 452</p> <p>1 Exxon scientists were looking, which is the entire 2 Conroe field. I think you need to look at vertically 3 where they were looking. 4 They were looking at just the upper part 5 of the Cockfield where the production is, whereas I'm 6 looking at a different horizon, primarily the lower 7 Cockfield, but also the totality of the Cockfield, the 8 confining unit, the famous Jackson shale, as well as 9 the horizons above it. 10 Q And is it your testimony, Dr. Langhus, that 11 you would recommend that the safety, integrity and 12 purity of the drinking water underneath the ground 13 here in Montgomery County be subjected to and left to 14 whatever the result may be of these competing 15 hydrogeological and expert disputes? 16 A No. I say that I believe I have a true and 17 reliable picture of the geology within -- the 18 subsurface geology within the AOR, and that that does 19 indeed show some faulting within it, specifically the 20 fault at roughly 4,400 feet south of the borehole, and 21 that the engineering and regulatory controls on any 22 kind of deep injection that occurs there, that that 23 engineering and regulatory controls keep in mind the 24 geology as I've described it. 25 So, no, I don't agree willy-nilly we</p>	<p style="text-align: right;">Page 454</p> <p>1 Q Some faulting would allow vertical 2 transmissivity? 3 A Correct. 4 Q If there is more faulting present in the area 5 of review than what you believe and if that faulting 6 is more significant than what you believe, isn't it 7 quite likely that could throw off the mathematical 8 calculations with respect to the plume and dispersal 9 rate of injected fluids? 10 A I don't think so. Even if I was wrong -- and 11 that's certainly -- there's the possibility of small 12 faults that have a very limited throw -- could be 13 present in the area that would connect up a couple of 14 stray sands in the lower Cockfield. That could 15 certainly happen, but the fact that it's confined to 16 the lower Cockfield is not going to influence the 17 engineering or the safety margins of the project. 18 I don't think that there are unknown 19 faults that are greater than 38 feet, which is the 20 thickness of the shale separating the lower from the 21 middle Cockfield. I don't think there are unknown 22 faults that large, and so that if there is an unknown 23 fault that's between well control so there would be no 24 geological evidence for it, if that -- if there's a 25 15-foot fault, let's say, within the lower Cockfield,</p>

1 that would not have an effect on the computer modeling
2 or on the safety margins built into the engineering.

3 Q Thank you, Dr. Langhus.

4 MR. WALKER: Your Honor, I'll pass the
5 witness.

6 JUDGE EGAN: Mr. Forsberg?

7 MR. FORSBERG: Yes.

8 RECROSS-EXAMINATION

9 BY MR. FORSBERG:

10 Q Dr. Langhus, would you agree with me that the
11 laws and regulations regarding drinking water are in
12 place to protect current sources of drinking water and
13 future sources?

14 A Yes.

15 Q So it's not just how the situation looks
16 today that's important, it's how the situation looks
17 at any point in the future when we need water?

18 A I don't know what "any point in the future"
19 might be.

20 Q Well, if humans are alive, we're going to
21 need water at some point. Correct?

22 A Yes, yes.

23 Q Okay. So "future" extends many generations
24 down the road?

25 A It does.

1 Q Is it your testimony -- and correct me if I'm
2 right or wrong -- that there is no way at any point in
3 the future that the water directly above the Jackson
4 shale will ever be useful?

5 A Foreseeable, that's correct, because it
6 has -- it contains Class II wastes, so high salinity
7 waters, which is difficult to remove from potentially
8 drinking water, and it also contains significant
9 quantities of organic molecules, like benzene; like
10 polycyclic hydrocarbons, like toluene, et cetera, et
11 cetera, et cetera, that are extremely difficult and
12 extremely expensive to get out of drinking water.

13 Q Difficult to remove today?

14 A Certainly.

15 Q Down the road, we don't know. If it becomes
16 economically viable -- we need that water and a
17 company can make money off of cleaning that water,
18 they will likely attempt to move the market forward,
19 wouldn't they?

20 A The Railroad Commission is pretty certain
21 that they won't. That's why the Railroad Commission
22 allows the injection of -- or the disposal of Class II
23 wastes into the Vicksburg and Frio sands.

24 Q Is it your position that -- just assume that
25 at some point that water, as it sits today, is needed

1 for usable drinking water above the Jackson shale. Is
2 it your position that -- just assume that at some
3 point that water, as it sits today, is needed for
4 usable drinking water above the Jackson shale. Is it
5 your position that the addition of millions of gallons
6 of Class I non-hazardous waste doesn't affect its
7 usability?

8 A I'm not sure how to answer that. It makes a
9 water source that's extremely difficult to clean up --
10 makes it extremely difficult to clean up. I don't
11 know.

12 Q Does it make it worse, or does it keep it the
13 same?

14 A I can't answer that.

15 Q We don't know?

16 A Right. We don't know, for instance, what
17 kind of chemicals are going in there now. Last time
18 we talked to Wapiti, they were putting in 120,000
19 barrels a day into the Frio and Vicksburg. That's ten
20 times what we're asking for. They're actually doing
21 it; you know, not a blue sky thing that, "Gee, it
22 would be nice if we can put away that much water into
23 the lower Cockfield."

24 Q Well, if a Class I came in contact with a
25 Class II material, could there be a reaction?

1 A No.

2 Q No chemical reaction at all?

3 A No.

4 Q Would they mix?

5 A Yes, yes.

6 Q So it would make dirty water dirtier?

7 A It depends. Like I say, you don't know what
8 the oil and gas operators are putting in their water
9 because they have a source exemption. They do not
10 have to analyze any of that 120,000 barrels a day.

11 Q We don't know specifically what's going to be
12 in the Class I wastewater that's injected in the
13 ground, you know, permitted to TexCom?

14 A Correct, not yet, no.

15 Q So we're putting a bunch of chemicals that we
16 don't know what they are in the ground with a bunch of
17 chemicals that we don't know what they are into what
18 is defined as an underground source of drinking water
19 potentially?

20 A Potentially, yes.

21 Q Thank you.

22 MR. FORSBERG: Pass the witness.

23 JUDGE EGAN: Ms. Collins?

24 MS. COLLINS: Thank you.

25

RECROSS-EXAMINATION

1 BY MS. COLLINS:

2 Q Mr. Langhus, I think I understood your
3 testimony during redirect with Mr. Riley to be that if
4 one map shows -- I think you were talking about
5 Exxon's maps -- if one map shows a fault and another
6 doesn't, then the fault probably doesn't exist. Is
7 that correct?

8 A That's one of the criteria that I would use
9 to interpret that fault. There are other things
10 that -- such as the amount of vertical offset, whether
11 or not it was cut by a fault -- I'm sorry -- by a
12 well. There are other things to look at but, yes,
13 yes, that's certainly one of the criteria.

14 Q So that's a tool for interpretation?

15 A Yes.

16 Q Okay. If there is that sort of clear
17 disagreement in past maps, is it best not to assume
18 that one exists?

19 A Oh, no, I think you need to interpret it,
20 interpret that -- why one is showing a fault and the
21 other is not.

22 Q So I'm not sure I quite understand your
23 answer. So it's not necessarily best to interpret it
24 as being there, but it's also not necessarily good to
25

1 A Well, it depends on the horizon that's being
2 compared to the lower Cockfield injection zone, but I
3 would guess that it would be safe to say that the
4 piezometric surface, or the water level within the
5 upper -- or the lower Cockfield probably stands higher
6 than any of the USDWs.

7 Q Okay. So it would reach up into even the
8 upper-level USDWs. Am I saying that correctly?

9 A Yes, if there were no restrictions.

10 Q Okay.

11 A Yes.

12 Q Thank you.

13 JUDGE WALSTON: That's all I had.

14 JUDGE EGAN: I just had one.

CLARIFYING EXAMINATION

15 BY JUDGE EGAN:

16 Q I understand that the Railroad Commission
17 allows Class II disposal, no matter what it is. Does
18 that mean it also includes hazardous waste, as opposed
19 to non-hazardous, or do we just not know?

20 A There is no determination. It's simply
21 what's called a source exemption. So if this waste
22 came out of my oil well, I can put it in that Class II
23 disposal well without analysis.

24 JUDGE EGAN: Okay.

1 interpret that it's not there. Is that what you're
2 saying?

3 A There's no quick and easy answer.

4 Q Okay.

5 MS. COLLINS: Pass the witness.

6 MR. WILLIAMS: No questions.

7 JUDGE EGAN: Okay.

8 JUDGE WALSTON: I had a clarifying
9 question.

CLARIFYING EXAMINATION

10 BY JUDGE WALSTON:

11 Q Could you look at your testimony towards the
12 bottom of Page 23?

13 A Yes.

14 Q Is that called the piezometric surface?

15 A Yes.

16 Q Okay. And there at the end on Page 24, you
17 say, "Within the area of review, the piezometric
18 surface of the fluid in the injection zone is not less
19 than the piezometric surface of the deepest USDW."

20 A Correct.

21 Q Okay. Is that -- when you're referring to
22 the deepest USDW, is that this zone where the Class II
23 injection wells are injecting, or how high up does
24 this piezometric surface go?
25

1 MR. RILEY: A couple questions.

2 JUDGE EGAN: All right.

FURTHER REDIRECT EXAMINATION

3 BY MR. RILEY:

4 Q Following up on Judge Walston's question
5 about piezometric surface, that also indicates that
6 there's not conductivity or transmissivity between the
7 stratum that you're discussing. Is that correct?

8 A Certainly.

9 Q In other words, water finds its own level.
10 We've heard that cliché.

11 A Right.

12 Q So if they were connected, you would actually
13 see that --

14 A That they had the same water level, yes.

15 Q Does it also mean that, generally speaking,
16 water under pressure at greater depth is under greater
17 pressure? Is that correct?

18 A Yes.

19 Q The -- Mr. Forsberg asked you a question, and
20 I don't remember exactly the question, but it seemed
21 to mischaracterize your testimony regarding where
22 TexCom proposes to inject and where the Class II wells
23 are injected.

24 I mean, Mr. Forsberg asked you a
25

1 question, like, "So we're injecting Class I wastes
2 into Class II wastes, and we're just going to see what
3 happens," something along those lines.

4 A Yes.

5 MR. FORSBERG: Objection, Your Honor.
6 The statement regarding me mischaracterizing the
7 testimony, that should have been an objection when I
8 asked the question, not --

9 MR. RILEY: Well, you cut the witness
10 off.

11 MR. FORSBERG: He should have objected
12 at that point.

13 JUDGE EGAN: Hold on. I understand what
14 your question was, and I'm going to allow him to ask
15 his question. This isn't a jury. We understand
16 what's being asked. Go ahead. You can answer.

17 A I can answer?

18 JUDGE EGAN: Yes. The objection is
19 overruled.

20 A The question -- perhaps I misunderstood
21 Mr. Forsberg's question, I don't know, but certainly,
22 the TexCom well is not injecting into the same
23 horizon -- into the same zone that the Class II wells
24 are injecting into. That's simply not true. They're
25 separated by some 3,000 feet. So that -- but the fact

1 course, just about any kind of produced water has
2 small amounts of oil in it, and so that's going to --
3 that's going to add to its toxicity, its ignitability,
4 all of that thing.

5 Q Some oils -- crude oils, produced oils, have
6 things such as benzene. Correct?

7 A Correct.

8 Q In fact, that's not necessarily a bad thing.
9 We use benzene for many purposes. Correct?

10 A Not many, but --

11 Q Well, some.

12 A -- yes, there is a place for it, yes. I
13 wouldn't drink it.

14 Q I understand. And my point was that it is
15 produced and if it can be preserved, it's preserved.
16 If not, it's injected --

17 A Yes.

18 Q -- as you described. And those are
19 particularly difficult chemicals to remove from this
20 water that's reinjected in Class II wells?

21 A Exactly.

22 MR. RILEY: I have nothing further.

23 MR. FORSBERG: A brief question, Your
24 Honor.

25 JUDGE EGAN: Well, wait a minute.

1 that I named the Vicksburg and the Frio sands as
2 potential buffers above the TexCom project -- so that
3 if something were to occur, and either native water
4 was expressed out of the Cockfield into the Class II
5 horizon or injectate somehow -- there was a -- who
6 knows -- and so this buffer would then function, the
7 buffer would essentially mix the two wastes, and I
8 don't know what the result would be.

9 Q (By Mr. Riley) It's not your opinion,
10 Doctor, is it, that there is a likelihood that the
11 Class I well injectate would mix --

12 A No.

13 Q -- with anything above the Jackson formation?

14 A No.

15 Q Finally, Judge Egan asked you some questions
16 about Class II waste disposal, and I understood you to
17 say that the Class II waste is simply exempt from
18 classification as either hazardous or non-hazardous.
19 Is that correct?

20 A That is correct.

21 Q So if it were not exempt in a legal sense, it
22 could very well be considered hazardous under various
23 federal and state statutes. Correct?

24 A It could, it could; depending upon where
25 that -- how that water was used and because, of

1 Mr. Hill? Mr. Walker?

2 (No response)

3 JUDGE EGAN: All right. Then go ahead,
4 Mr. Forsberg.

5 FURTHER RECROSS-EXAMINATION
6 BY MR. FORSBERG:

7 Q I just want to make clear, you haven't
8 actually tested any materials that are being injected
9 by Wapiti or anybody else in these Class II injection
10 wells in Montgomery County.

11 A No, no.

12 Q So when you say they may have some chemical
13 in them, it's not that you have any actual knowledge.
14 It's just they may?

15 A Right.

16 Q They may not?

17 A That's exactly what I said, yes.

18 MR. FORSBERG: Okay. Thank you.

19 JUDGE EGAN: Mr. Williams?

20 MR. WILLIAMS: No.

21 JUDGE EGAN: Mr. Riley?

22 MR. RILEY: No, ma'am. Thank you.

23 JUDGE EGAN: Then you may be excused.

24 Thank you very much.

25 Mr. Riley, are you ready to proceed?

<p style="text-align: right;">Page 467</p> <p>1 MR. RILEY: We are. Mr. Lee will lead 2 the examination. 3 JUDGE EGAN: Give me just a second. 4 MR. RILEY: Your Honor, I neglected, 5 before we switched witnesses, to offer TexCom Exhibit 6 68 into the record as a demonstrative -- 7 JUDGE EGAN: It had been previously 8 admitted, and I believe you're asking that the 9 additional markings be added to it. Any objections to 10 that? 11 (No response) 12 JUDGE EGAN: Then the updated Exhibit 13 No. 68 is admitted. 14 MR. RILEY: Thank you. 15 (TexCom Exhibit No. 68 admitted) 16 JUDGE EGAN: And let me go ahead and 17 have the court reporter swear in the witness. 18 (Witness sworn) 19 JUDGE EGAN: Would you state your full 20 name for the record? 21 WITNESS BRASSOW: Carl Luther Brassow. 22 JUDGE EGAN: You're going to need to 23 speak a lot louder. 24 WITNESS BRASSOW: It's Carl Luther 25 Brassow.</p>	<p style="text-align: right;">Page 469</p> <p>1 TexCom Exhibit 59? 2 A Yes, it is. 3 Q Does it also include two associated exhibits 4 marked as TexCom Exhibits 60 and 61? 5 A Correct. 6 Q Are there any changes you wish to make to 7 your prefiled testimony today? 8 A No, sir. 9 Q Do you intend to adopt it as if you were 10 reciting all the words in there today live? 11 A Yes, I am. 12 MR. LEE: Your Honors, applicant moves 13 to admit TexCom Exhibits 59 through 61 into evidence. 14 JUDGE EGAN: Being that there was no 15 previous objections, TexCom Exhibit Nos. 59, 60 and 61 16 are admitted. 17 (TexCom Exhibit Nos. 59 through 61 18 admitted) 19 MR. LEE: We'll pass the witness. 20 JUDGE EGAN: Are you going to be the 21 one -- okay. Mr. Gershon, go ahead. 22 MR. GERSHON: Thank you, Your Honor. 23 CROSS-EXAMINATION 24 BY MR. GERSHON: 25 Q Mr. Brassow, good afternoon. My name is Mike</p>
<p style="text-align: right;">Page 468</p> <p>1 JUDGE EGAN: You may proceed, Mr. Lee. 2 CARL LUTHER BRASSOW, 3 having been first duly sworn, testified as follows: 4 DIRECT EXAMINATION 5 BY MR. LEE: 6 Q Good afternoon, Mr. Brassow. 7 A Hello. 8 Q Mr. Brassow, did you perform the engineering 9 work for the TexCom surface facility application? 10 A Yes, I did. 11 Q Did you also prepare the technical aspects of 12 the surface facility application that we've been 13 talking about? 14 A Yes, I did. 15 Q And you are a professional engineer. 16 Correct? 17 A Yes, I am. 18 Q Did you affix your professional engineer's 19 seal to the technical report contained in the 20 application? 21 A I did. 22 Q Did you prepare prefiled direct testimony 23 that you intend to give today in these proceedings? 24 A I did. 25 Q Is it sitting in front of you marked as</p>	<p style="text-align: right;">Page 470</p> <p>1 Gershon. I represent the Lone Star Groundwater 2 Conservation District. I don't know that we've met 3 before. 4 A We have not. 5 Q Okay. I will be asking you some questions on 6 cross-examination that relate to your expert opinions 7 and testimony with respect to the TexCom commercial 8 industrial solid waste permit applications. 9 A Okay. 10 Q I'll try to be as clear as possible with my 11 questions. 12 I understand that you are a licensed 13 attorney in the state as well. 14 A Yes. 15 Q Is that correct? 16 A That's correct. 17 Q So you're probably quite familiar with 18 cross-examination. 19 A Somewhat, yes. 20 Q If I ask any confusing questions, I'm not 21 meaning to trip you up. Just ask me to clarify and -- 22 A I'll do that. 23 JUDGE EGAN: Could you pull that mike 24 closer to you because you're looking at the attorney, 25 Mr. Gershon.</p>

1 A It brings new meaning to "talking out of the
2 corner of your mouth."

3 Q (By Mr. Gershon) So do you have an active
4 law practice, Mr. Brassow?

5 A I still maintain a law practice. I don't
6 practice law on a daily basis --

7 Q Okay.

8 A -- if that makes sense. I have a law firm.
9 It's still active. I'm still a licensed attorney in
10 the state of Texas, but I don't practice law on a
11 daily basis commercially.

12 Q Okay. So in your testimony where you say you
13 have over 34 years of engineering experience, does
14 that include 34 years since you were licensed back, I
15 think, in the '70s?

16 A Yes, that does.

17 Q Okay. Do you have an engagement agreement as
18 an engineer to work on TexCom's behalf in support of
19 these applications?

20 A Yes, I do.

21 Q Okay. Was it entered back in 2004 or 2005?
22 At what point did you begin working for TexCom?

23 A There's essentially two engagements. Back in
24 2005, I didn't have a written engagement with TexCom
25 at that time to assist them with the permitting, and I

1 have another engagement, obviously, to be here and
2 represent TexCom in this proceeding. So -- and that
3 engagement was entered into a few months ago.

4 Q Let me make sure I understand. Have you
5 fulfilled the terms of your initial engagement to work
6 on the application?

7 A As far as I know I have, yes.

8 Q Okay. And just to be clear, was that
9 engagement with your company, Coastal Caverns?

10 A No, that was individually.

11 Q Individually, okay. So is Coastal Caverns
12 not associated --

13 A Coastal Caverns has no association with this
14 proceeding whatsoever.

15 Q Okay. Yet you, as an engineer work -- so let
16 me make sure I understand. When you are acting as an
17 engineer, do you sometimes act as an engineer in a
18 capacity as an engineer that is an employee of Coastal
19 Caverns?

20 A Let me digress a second. Yes, the answer to
21 that is if I engage in an assignment -- and the TexCom
22 assignment is essentially the only engineering
23 assignment that I've engaged in independently since
24 2005, 2004. I did that in my individual capacity as
25 Carl Brassow.

1 Coastal Caverns is the company that
2 currently I'm the president of. It's a company that
3 is engaged in the development of the hydrocarbon
4 storage project, and it has no association with TexCom
5 whatsoever.

6 Q Okay. Fair enough.

7 A Let me qualify that. At one point, Coastal
8 Caverns and TexCom did have a minor relationship with
9 a company that we set up and chartered in the UK, and
10 that company is inactive at this point.

11 We were pursuing a disposal project over
12 in the UK, and we terminated that pursuant, I think,
13 in 2004. There was issues related to property at that
14 point, and we decided just simply to terminate
15 pursuing that project, and TexCom was a shareholder in
16 CCUK, which is a totally independent company. TexCom
17 has no association whatsoever with Coastal Caverns,
18 Inc., which is a Texas corporation.

19 Q Okay. So there's no arrangement, other than
20 an hourly rate structure, for you to be working in
21 your individual capacity as an engineer for TexCom?

22 A That's correct.

23 Q Okay. If the permits were to be issued, is
24 it your understanding that you may continue doing some
25 work for TexCom?

1 A That really has never been discussed.

2 Q Okay. Fair enough.

3 JUDGE EGAN: If both of you-all could,
4 speak up when the air conditioner comes on.

5 MR. GERSHON: I'm sorry. Sure, I will.

6 Q (By Mr. Gershon) Did you work with Allen
7 Blanchard in preparing the application?

8 A Yes, I did.

9 Q Okay. And I'm looking -- I was looking at
10 the signature page for the application that was
11 submitted, and I would be pleased to give you a copy
12 if you would like, but I've got just a simple
13 question.

14 It shows that Mr. Allen Blanchard was
15 the signatory as the environmental manager on behalf
16 of the applicant back in 2005. Is that your
17 understanding?

18 A That's correct.

19 Q So can you describe, really, vis-a-vis
20 Mr. Blanchard what the scope of your work was? Well,
21 let me withdraw the question.

22 Were you working under the direction of
23 Mr. Blanchard?

24 A No. Mr. Blanchard is -- I would call
25 Mr. Blanchard an environmental manager, environmental

<p style="text-align: right;">Page 475</p> <p>1 professional, but to my knowledge, he's not a 2 registered engineer. 3 Q Okay. 4 A So I worked with Mr. Blanchard in the 5 preparation of the application. Mr. Blanchard 6 actually did a lot of the drafting of the text and all 7 that, but essentially I reviewed all the work, 8 reviewed materials that he put together. I did really 9 what I would call the guts of the engineering, which 10 is the process flow diagrams, you know, the outline 11 and calculations relating to the MCA, the control 12 area -- okay -- plus the associated truck unloading 13 areas and the pumping, the tanks, what I would call 14 the hard engineering. 15 Q You mentioned there was data that he pulled 16 together. What was the nature of data and information 17 that Mr. Blanchard pulled together? 18 JUDGE EGAN: Mr. Gershon and 19 Mr. Brassow, could you speak up? The court reporter 20 is having a hard time and I'm having a hard time. So 21 I know nobody back in the back can hear. It's not the 22 best. We have found those don't help too much, but 23 you have to speak up as loudly as you can. 24 MR. RILEY: I would suggest maybe he 25 hold it in his hand. It's a little MC-like but --</p>	<p style="text-align: right;">Page 477</p> <p>1 Q Okay. Do you know why he left the company? 2 A I have no idea. 3 Q Okay. Who else on TexCom's team has a 4 working knowledge of the application that you worked 5 on? 6 A Mr. Ross. 7 Q Dr. Ross? 8 A Yes. 9 Q What is your understanding of Dr. Ross' work 10 on the application? 11 A Well, he familiarized himself with the 12 information. I think he testified to that. 13 Q Okay. Is it fair to say that you really -- 14 you took the lead on that application? 15 A On the engineering portion, yes, that's 16 correct. 17 Q So let's talk about your background and your 18 experience with these types of applications. In your 19 prefiled testimony, you say that you have been 20 qualified as an expert in three other SOAH hearings on 21 "non-hazardous industrial solid waste applications 22 such as this one," and then you refer to three. Well, 23 you refer to two, and then the location of the third; 24 United Resource Recovery, Secured Environment 25 Management and one in Deer Park. Do I have that</p>
<p style="text-align: right;">Page 476</p> <p>1 JUDGE EGAN: That's fine. Anything that 2 makes it easier for us to hear you. 3 Q (By Mr. Gershon) Okay. Where were we? We 4 were talking about the respective roles of yourself 5 and Mr. Blanchard. You explained your role with the 6 application. 7 Could you explain the nature of the 8 information and the work that Mr. Blanchard did on the 9 application? 10 A Mr. Blanchard essentially compiled the 11 information that -- he was the scribe, the writer, 12 put things down, and I would review all that 13 information. And so he would literally type it into 14 the application, and I would just review information 15 and develop the information so the draft then gets 16 done. Does that make sense? 17 Q It does. Are you still in communication with 18 Mr. Blanchard? 19 A Actually, I have not talked to Mr. Blanchard 20 in probably over a year. 21 Q So I would assume that means he's not working 22 in support of the company's application in pursuit of 23 the permits at this point? 24 A I actually don't know his relationship with 25 the company.</p>	<p style="text-align: right;">Page 478</p> <p>1 right? 2 A Yes. 3 Q What was the name of the one in Deer Park? 4 A It was the Rollins Environmental Services 5 landfill application. 6 Q Okay. And so I think that I understand what 7 you mean when you're saying "similar." I mean, how is 8 that particular application similar to the one that we 9 have that involves an injection -- Class I injection 10 well in this case? 11 A It's what I would call progressive. The Deer 12 Park facility was a facility that was being developed 13 as a hazardous waste landfill as well as an 14 incineration project back in the late 1970s, right 15 after the Resource Conservation Recovery Act was 16 passed. 17 So we began to develop the kinds of 18 permit requirements that have been developed and I 19 think we see now in the rules before the Commission. 20 So we were looking at waste acceptance procedures. We 21 were looking at the requirements for, at that time, a 22 landfill -- and it turns out that this is an 23 aboveground landfill, so it has some special 24 consideration. 25 We were looking at testing requirements</p>

1 for material because it was a commercial facility so
2 they were receiving wastestreams into the facility.
3 JUDGE EGAN: I'm sorry. I couldn't hear
4 you.

5 A They were receiving wastestreams into the
6 facility. So we began to develop the procedures there
7 in that -- you know, in that particular proceeding as
8 to how wastes would be viewed, how it would be
9 accepted, how it would be ultimately tested. So it
10 was related to what we're doing now.

11 The United Resource Recovery project was
12 a project in Wharton County that we began in 1983, and
13 actually, I was a founder of United Resource Recovery.
14 That was the first and initial hazardous waste
15 injection well into a salt dome formation for the
16 disposal of hazardous wastes in salt caverns. So out
17 of that particular proceeding, we specifically have
18 new rules that are found in 331 TAC 331.

19 The interesting part of that one was it
20 was a liquids disposal project as a deep well, and so
21 the issues that we're looking at today in terms of the
22 surface facility are almost identical. The secured
23 environmental --

24 Q (By Mr. Gershon) And before we move on, you
25 mentioned that as a result of the United Resource

1 Recovery case or application, if you will, we now have
2 rules in chapter -- you cited to 331. What do you
3 mean by that?

4 A Well --

5 Q Were rules promulgated because of issues that
6 came out of that application that were learned about
7 that application by the Commission?

8 A Yes, because the state had no specific rules
9 dealing with salt dome injection facilities, but we
10 had rules dealing with -- well, we had adopted the
11 underground injection control program. We had
12 adopted, by that time, the Solid Waste Disposal Act
13 and the pieces of the RCRA hazardous waste program.
14 There were air emission issues related -- actually,
15 they're not in the United Resource Recovery project.
16 Air emissions were not an issue there, and then we
17 were dealing with discharges of waters from the
18 facility, NPDES permits.

19 Q Sure, certainly. Now, you said that you
20 had -- did I understand you correctly to say that you
21 formed United Resource Recovery?

22 A I was one of the founders.

23 Q Okay. And were its applications denied?

24 A No, they were actually -- that was the only
25 time that the facility was permitted, in Christmas Eve

1 night of 1986.

2 Q And that's hazardous waste --

3 A Yes.

4 Q -- hazardous waste facility was granted?

5 A Yes.

6 Q And, now, you were about to tell me about the
7 SEM, the Secured Environment Management project --

8 A Yes.

9 Q -- your background.

10 A The United Resource Recovery project
11 ultimately was denied on remand. It went up through
12 the appeals process about three times, and ultimately
13 the Commission denied it on the question of
14 solidifying wastes that would go into the cavern. So
15 the Secured Environmental Management project was a
16 successor to the United Resource Recovery project.

17 There are various reasons for that, but
18 Secured Environmental Management was formed to reapply
19 using the Commissioners' guidance as to what were
20 required or what they wanted to see in the new
21 application, and that project was granted draft
22 permits in 1997 until a legislative action prohibited
23 hazardous waste disposal in salt dome caverns.

24 Q Okay. In your testimony, you say that you
25 have reviewed at least a dozen non-hazardous

1 industrial waste permits. Now, what do you mean by
2 that? You've actually been involved on the
3 application side of it, or you've looked at --

4 A I've looked at the permits, yes.

5 Q Looked at the permits?

6 A Yeah.

7 Q How many of those were you retained to
8 actually work on, of those dozen?

9 A Well, I'm including in that, you know, Class
10 II wastes, too. I mean, well --

11 Q Let me make sure I understand. You referred
12 to it as non-hazardous industrial wastes.

13 A Oh, I'm sorry. Then I have reviewed -- I was
14 not retained to work on the application of the Class I
15 non-hazardous well application. I was retained to
16 review the terms and conditions of those. Okay?

17 JUDGE EGAN: Mr. Gershon, could you
18 direct us to the page?

19 MR. GERSHON: Sure; Page 5, Lines 17
20 through 20.

21 JUDGE EGAN: Thank you.

22 MR. GERSHON: Then Mr. Brassow's
23 answer it's -- that's right. It's on Line 20. He
24 refers to a dozen.

25 Q (By Mr. Gershon) So let me make sure I

1 understand. So you've -- I'm sorry. You have or you
2 haven't reviewed the actual non-hazardous industrial
3 waste permits?

4 A I have reviewed the non-hazardous industrial
5 waste permit. I was not engaged to develop the
6 application.

7 Q Okay. And in what capacity were you
8 reviewing these dozen permits? What was the reason
9 for your review?

10 A Clients just wanted to know, you know,
11 basically were the permit conditions reasonable, and,
12 you know, really, could they operate that way.

13 JUDGE EGAN: You need to speak up. It
14 might be easier, when you ask your question, if you'll
15 turn this way because your voice keeps dropping off,
16 and I know we can't hear.

17 Q (By Mr. Gershon) Okay. So were you
18 reviewing those permits in your capacity as an
19 attorney or an engineer?

20 A Mostly as an engineer. I really couldn't
21 separate the two. There's some issues related to just
22 the rules, but really as an engineer, were the permit
23 conditions reasonable.

24 Q So the clients that you were reviewing those
25 permits for, were you reviewing those permits for

1 clients that were developing or looking for your
2 advice on industrial -- non-hazardous industrial solid
3 waste permit applications?

4 A That's probably a fair description, yes, that
5 they were looking for advice. They were -- yes, they
6 were looking for advice.

7 Q Okay. And so how many of these types of
8 applications -- and let me take it a step further.
9 How many commercial industrial solid waste
10 applications have you worked on?

11 A Non-hazardous?

12 Q Correct.

13 A I have not developed any other -- this is the
14 first non-hazardous industrial well that I've worked
15 on.

16 Q Okay.

17 MR. GERSHON: Just a moment.
18 (Brief pause)

19 Q (By Mr. Gershon) Let me make sure that I
20 understand your testimony and your background with the
21 actual regulations that you believe to apply in this
22 case.

23 In your testimony, I'm looking at
24 Page 6, Lines 6 through 16 -- really, 6 through 9 and
25 13 through 16. You talk about that you have an

1 in-depth understanding of the regulations of
2 non-hazardous industrial waste facilities by TCEQ and
3 an in-depth understanding of TCEQ requirements
4 governing these types of applications, non-hazardous
5 industrial waste applications, that you've had many
6 conversations and meetings with TCEQ to discuss the
7 agency's interpretation and application of those
8 requirements. That's a statement that you made. Do I
9 have that right?

10 A That's correct.

11 Q Do you know Mr. Graeber -- Mike Graeber with
12 TCEQ?

13 A No.

14 Q Okay. You've testified -- actually, I think
15 you've given us a list of the rules that you've
16 applied in this case; Chapter 305, including --
17 specifically you mention in your testimony 305.50,
18 281.5 and 205.45. Those are the rules you listed in
19 your testimony and the rules that you understand to
20 apply. Is that correct?

21 A That's correct.

22 Q Mr. Brassow, you also followed TCEQ's written
23 instructions. Correct? There were a set of
24 instructions that were attached to prefiled testimony.

25 A Yes.

1 Q Were those instructions that you followed?

2 A Yes.

3 Q Let's talk about some of the details of the
4 application.

5 Is it true that incoming wastestreams
6 are actually treated after they're unloaded from the
7 customers' trucks or whatever the delivery trucks are?

8 A Incoming waste can be treated. They're
9 almost always processed, and I'll differentiate the
10 two. For instance, if we receive a material that we
11 want to change the pH, I would designate that as a
12 treatment. If we want to remove solid materials
13 without changing the wastes, other than removal of the
14 solids, that would be a process.

15 Q Is it necessary to use freshwater for some of
16 the treatment or processing?

17 A It's not necessary to use freshwater. We
18 could use saline water, but freshwater for washing --
19 you know, washing off the screens or cleaning out,
20 say, a tank truck, you know, after the waste has been
21 removed, yeah; so from that standpoint, freshwater is
22 a process water.

23 Q What is the plan for this particular site
24 with respect to a source of water?

25 A I think we have a well planned.

1 Q Okay. Mr. Brassow, is wastewater with pH
2 higher than nine or lower than three still considered
3 a non-hazardous waste?

4 A Yes. I think the differentiation is if it's
5 higher than 12.5 pH, it's considered a corrosive
6 hazardous material, and if the pH is less than two,
7 it's considered a corrosive acidic material.

8 Q Are you familiar with, you know, where in
9 TexCom's application there's a description of how the
10 wastestream will actually be piped from storage
11 facilities to the injection well?

12 A One of the figures is a process flow diagram
13 that shows the piping.

14 Q Okay. Well, let's talk about that. Could
15 you describe the nature of the pipe, the composition
16 of the pipe that's planned to be used?

17 A From the truck unloading to the tanks?

18 Q Well, no; from the storage tanks to the
19 actual injection well.

20 A Yes. I mean, it's "and/or wells." There
21 would be, you know, if multiple wells are permitted,
22 you would actually continue the piping to all the
23 permits. That could be a single pipe or multiple
24 pipes, but let's assume that it's a single pipe. You
25 know, from the actual injection tanks when the water

1 is ready to be injected, there is a pump at each tank.
2 It's -- I think the tanks are actually manifold
3 together, and you essentially open the valve, if you
4 will. That could be a motor controlled valve. It
5 might be a manual valve.

6 Q I don't mean to be rude in cutting you off.
7 I was really interested in the composition of the
8 pipes. What is the composition of the pipe going to
9 be, whether it's a metal or a ductile iron?

10 A I think we've called for a polynitrile tank
11 under pipe now. We could substitute that with a
12 normal steel -- steel pipe. Steel has higher pressure
13 ratings obviously, and we can monitor the corrosion.
14 That's commonly done on that. So if there's any
15 impact on the pipe itself, we would monitor -- that's
16 one of the monitoring provisions, actually monitor any
17 degradation of that connecting pipe.

18 Q Now, I couldn't find in the application --
19 perhaps it's there. Help me find it if it's there,
20 but I didn't see any description of that composition
21 of the pipe, and help me get there.

22 What I'm hearing you say is that it
23 depends on the wastestreams, and I think what I'm
24 hearing you say -- correct me if I'm wrong -- that
25 TexCom will have an ability to substitute out the

1 pipe, if that's what I heard you say?

2 A Actually, the probable -- the final selection
3 of the piping hasn't been made. The probable
4 selection of that will be a steel pipe, and the reason
5 for that is simply pressure ratings.

6 If you want to inject into the well at
7 such and such pressure, the connecting pipe between
8 the discharge size of the pump and the wellhead has to
9 be higher than the injection pressure obviously.

10 That, in all likelihood, will be steel. If there is
11 another material that is -- will meet those pressure
12 requirements, then we may substitute it out.

13 Q So it's not described in the application?

14 It's --

15 A I thought it was on a table actually. I
16 think there was a table about the materials of
17 construction, and I thought there was a table that
18 indicated the piping that goes from the injection
19 pumps to the wellhead. So I think it's in there.

20 Q Does your recollection of that table include
21 a variety of options? You mentioned --

22 A I can't recall.

23 Q Well, what would the other options be, other
24 than steel, PVC?

25 A Well, you could have a reinforced

1 fiberglass-type pipe, is one. But, again, it all
2 depends on the final pressures and the wellhead
3 pressures and what the material will be. That's what
4 I'm saying. I'm telling you that the likelihood is
5 that that steel will -- I mean, the piping will be
6 steel from the injection pumps to the wellheads.

7 Q Are you familiar with the fairly extensive
8 table -- well, let me say with a table with a fairly
9 extensive list of potential wastestreams?

10 A Yes.

11 Q Okay. Are you confident that the steel pipe
12 would not be corrosive -- well, that -- are you
13 confident that there wouldn't be any problems with a
14 steel pipe if any of the identified wastestreams were
15 to be brought on and pumped through that pipe?

16 A Absolutely confident.

17 Q Okay. Where -- well, can you describe for me
18 whether -- well, how the mixing and storage tanks are
19 cleaned? Are they cleaned from time to time?

20 A There's always provisions in the tanks that
21 they can be cleaned. Whether they're cleaned or not
22 is depending on whether you build up any sludge or
23 residuals in the bottom of the tanks.

24 I don't think we've spelled out a
25 schedule for cleaning. That would be an operational

1 issue about whether sludge built up in a tank and it
2 would cause some problems.

3 The way that the waste is situated or
4 designed to come in, it's essentially processed and/or
5 treated to remove the solids. So the chances of
6 building up any sludge in any given tank is very
7 small, but if there was some sort of precipitation or
8 sludge build-up and it caused an operational issue,
9 yeah, they would be cleaned.

10 Q Okay. On Page 16 of your testimony,
11 beginning on Line 1, there's a discussion of the
12 possibility of precipitates forming downhole. What
13 you say is that clients' wastewaters may require
14 additional processing to avoid that, to ensure the
15 precipitates do not form downhole.

16 Now, where will that processing occur to
17 remove these precipitates?

18 A There's mixing and reaction tanks. There's a
19 couple of them called out, and if during the analyses
20 of the incoming wastestream it would appear that, you
21 know, that the wastes could precipitate out a solid,
22 we would anticipate that and actually treat that
23 waste -- this may not be necessarily neutralization.

24 It would simply be adding a chemical
25 such that the material would precipitate out, and then

1 that material -- the wastewater with the precipitate
2 at that point would go through the filtration unit to
3 remove the precipitate so it doesn't go downhole so
4 the precipitate is not formed in the formation.

5 Q Okay. How are those solids removed from the
6 site -- removed from TexCom's property?

7 A It goes into a solids bin and then it's
8 manifested and goes to a landfill.

9 Q Okay. Does the application describe that
10 process?

11 A Briefly. It says that the solids removed
12 from the wastestream go into one of two solids tanks
13 or bins, and then when -- at the appropriate time,
14 whenever they're full or close to being full, tanks
15 are removed and the solids are taken to a landfill.

16 Q Would you classify -- or do you know whether
17 those solids would be classified as non-hazardous
18 wastes?

19 A In my opinion, they would be non-hazardous
20 solid wastes.

21 Q Okay. And has TexCom identified a landfill
22 where those solids could be disposed of?

23 A I don't think so. I think Mr. Ross testified
24 they haven't selected a landfill at this point, but it
25 would be a permitted landfill; in other words, if the

1 Conroe landfill could receive industrial non-hazardous
2 wastes, that would be a candidate site.

3 Q Okay. You mentioned in your testimony on
4 Page 15 -- I believe you began around Line 10 -- you
5 talk about the shaker screen. You say that if the
6 wastestream had any odors, those might be released
7 during treatment in the shaker screen unit. That was
8 the exception to the possibility of there being odors.

9 MR. LEE: Objection; Your Honor.

10 JUDGE EGAN: What's the objection?

11 MR. LEE: I think it's a
12 mischaracterization of testimony.

13 MR. GERSHON: Okay. Let me read the
14 testimony. I'm sorry, Judge. I think you were about
15 to comment.

16 JUDGE EGAN: Go ahead and read it
17 verbatim if you would like.

18 Q (By Mr. Gershon) Okay. Let me -- to be
19 fair, let me read the question and the answer. The
20 question is, "Do you believe that waste offloading or
21 any other activity at the surface facility will result
22 in odors?" You answer, "In a word, no. The
23 wastewater will be contained in airtight pipes, hoses
24 or tanks virtually the entire time from when it
25 arrives at the site to when it is injected into the

1 well. The only exception is when it is treated using
2 the shaker screen unit, but the type of industrial
3 wastewater TexCom will be disposing of is generally
4 odor free." Is that your -- do you still stand behind
5 that statement?

6 A I do.

7 Q So what I want to know is what you mean by
8 this exception. Is it true that all of the potential
9 wastestreams that TexCom may take are odor free?

10 A It doesn't mean that all of them are odor
11 free. I just --

12 Q Well, you answered that question. Let me
13 take the next step.

14 So if some of the wastestreams do have
15 attributes of some odor, emit properties of -- emit
16 odor, how might those odors be emitted under this
17 exception where they're running through the shaker
18 screen unit?

19 A I can't quantify, but I can qualify. It's
20 very small because the shaker screen units are a
21 relatively small open top -- it can be open topped.
22 Actually, it can be a closed-top unit, too, and it
23 consists of a series of different screens. The waste
24 comes in, is piped in over the shaker screen. This is
25 a typical oil field piece of equipment, use it all the

1 time, too.

2 The waste comes in, goes across the
3 screens, and like I say, it can be one or multiple
4 screens to take out or make a cut of a certain
5 particle size. If the shaker screen is actually open
6 to the atmosphere, that is the one point where, you
7 know, you could have odors emitting.

8 If you close the shaker screen, then you
9 reduce the possibility of any odors coming off the
10 shaker screen. The solids come off the shaker screen
11 into the bin. The water goes to the bottom, goes back
12 into the pipeline onto the next tank or the next
13 processing point in the -- in the management control
14 area, the MCA. I'll refer to it as the MCA.

15 Q Let's talk about contingency plans, some of
16 the emergency measures that are built into the
17 application.

18 Let's talk about rain events and
19 stormwater management. Can you describe what run on
20 means, run-on water?

21 A Yes, runon, if you have -- if you have a
22 severe, say, rainfall event and you're -- let's take
23 a -- let's take your house. If you don't build your
24 house up and then water comes against it, it can run
25 on to the house, or, you know, flood the house, or in

1 the case of an industrial site, runon can come across
2 the site. Runoff is going the other direction, off
3 the site and into a drainage feature. So we
4 differentiated how much can come on to an active unit
5 versus run off, which is going away from the facility.

6 Q And is it true that TexCom is obligated to
7 capture that runon and not allow it to run off the
8 property?

9 A The design is such that we are capturing the
10 rainfall on the active management units, that's
11 correct. We're not preventing runon to the site.

12 Q Understood. And I didn't mean that by my
13 question. Just the runon that is actually making it
14 to the site is captured on the site?

15 A No. The runon that comes onto the site,
16 we've designed the facility such that the tanks and
17 the waste unloading areas are not subject to any
18 runon. They're protected with a concrete wall.
19 They're protected with a berm. When we actually
20 construct, we may actually elevate the site a little
21 bit so runon doesn't impact the active management
22 unit.

23 Q Okay. So let me -- your testimony is that
24 TexCom has undertaken contingency planning for
25 worst-case scenario rainfall. Correct?

1 A Correct.

2 Q Okay. Let me make sure I understand. The
3 stormwater that makes it to the site that -- well,
4 what water is it that -- what do you do with the
5 stormwater that makes it onto your site? How do you
6 capture it and deal with it?

7 A Well, let me give you an example. Let's say
8 that the top of the podium here is the site, and I put
9 a teacup out there, which represents the management
10 unit. We're capturing the water that falls into the
11 teacup and disposing of it.

12 Q And where do you do dispose of it?

13 A In the deep well.

14 Q I'm sorry?

15 A Into the well.

16 Q What happens in a major rain event where that
17 cup fills up very quickly and you don't have an
18 ability to capture the quantity of water that --

19 A But we do have the ability. That's what we
20 designed the facility to do. The active management --
21 the MCA is approximately 118 by 70 feet, I believe is
22 what the dimensions are, and it is surrounded by a two
23 foot -- it's on concrete with a two-foot perimeter
24 concrete wall.

25 Q Let me ask you some questions about that.

1 Are you using some of your actual storage tanks to
2 capture that water and to hold that incoming
3 stormwater?

4 A No. The volume of the management unit itself
5 is more than the 100-year, 24-hour rainfall event. So
6 that if the 100-year, 24-hour rainfall event was
7 12 inches, there's two-foot high walls. So we could
8 actually hold a 24-inch rain, if you will.

9 So we've overdesigned the collection
10 ability of the entire active management area to
11 capture all the rainfall, and we have -- you know, in
12 the unloading area, that's captured in there also. So
13 we have the ability to capture all the rainfall, but
14 what we're doing is our preferred and -- our method of
15 operation is to pump the rainfall as it occurs into
16 the storage tanks, and then at the same time we're
17 injecting water into the well, but literally if the
18 pumps failed, the system was designed to capture all
19 the water and contain all the water without any
20 discharge.

21 MR. GERSHON: I pass the witness.

22 JUDGE EGAN: I'm just trying to figure
23 out who's asking the questions. Okay. Ms. Stewart,
24 you may proceed.

25 MS. STEWART: Thank you, Judge.

CROSS-EXAMINATION

1 BY MS. STEWART:

2 Q Mr. Brassow, my name is Julie Stewart. I
3 represent Montgomery County and the city of Conroe. I
4 would just like to ask you a few questions about what
5 I'm going to be calling the surface facilities.

6 A Okay.

7 Q Based on your work and your preparation of
8 the surface facility application, do you have an
9 estimate of how many trucks will be accessing the
10 proposed facility each day?

11 A Well, that's -- that is a function of a
12 couple of parameters, the biggest one -- or the
13 maximum amount would be if we -- or if TexCom -- not
14 "we" -- if TexCom had a very good marketing program
15 and they're receiving their daily maximum limits, then
16 I think that number is in excess of 500,000 gallons a
17 day. That would be extraordinary. That would be -- I
18 think the math on that is about 90 trucks a day if
19 you're at the permitted levels.

20 Q Do you know, based on your work on this
21 project, the hours that TexCom will be actively
22 accepting waste?

23 A We estimate in the range of eight to ten
24 hours a day, I think.

1 Q Do you know approximately what time, starting
2 from the morning until the evening, is eight to ten
3 hours a day? Do you have any knowledge concerning
4 that?

5 A Actually, I don't. That's an operational
6 decision, when the doors would open.

7 Q So if TexCom would be actively accepting
8 waste for treatment, storage and disposal after dark,
9 does the surface facility application show any
10 location of exterior lighting?

11 A Yes, it does.

12 Q Where are exterior lights to be located?

13 A On the corner of -- on all four corners of
14 the management control area, around the waste
15 unloading area, and I believe there's lighting in the
16 office and laboratory area.

17 Q Do you know the maximum volume each truck
18 will be carrying? What's the maximum volume a tanker
19 truck could carry to the site?

20 A There's several types of trucks that can
21 bring waste to the facility. All of them are what I
22 would call tanker trucks. The largest, I think, is,
23 like, 130 barrels. It looks like a gasoline truck,
24 that size. Then you have vacuum trucks that are a
25 little bit smaller, and I think those are normally

1 about 100 barrels or 4,200 gallons, and then you can
2 have smaller vacuum trucks that would be in the range
3 of 50 barrels, so that would be 2,400 gallons.

4 Q How many unloading bays are proposed to be
5 located in the surface facility area?

6 A Four.

7 Q In the surface facility application, is there
8 any information on whether or not the arrival of
9 trucks will somehow be scheduled? Is that a reality
10 in this industry?

11 A I don't believe we address scheduling, per
12 se, in the application. The reality is it's a
13 function of the generator and when he can load his
14 wastes and actually discharge the truck. So it's not
15 possible for me to predict that.

16 Q I appreciate that. Thank you. So operating
17 at maximum value, in TexCom's best case, there could
18 be 90 trucks arriving at the facility between eight
19 and ten hours a day for four unloading bays. Is that
20 correct?

21 A That's the theoretical maximum. We, right
22 now, are looking at eight to ten hours of operation.
23 There is a -- estimate, if you would, about three
24 trucks per hour per day. So it could be 12 trucks per
25 hour in terms of the operational part of receipt and

1 discharge.

2 Q I appreciate your bearing with me. I
3 understand that this concerns the operational aspects
4 and that you have testified in response to
5 Mr. Gershon's questions that you took the lead on the
6 engineering portion --

7 A Yes.

8 Q -- so I appreciate your patience.

9 Let's turn to your prefilled testimony on
10 Page 32. Specifically at Line 4, you're responding to
11 a question from your counsel, "Will it be possible for
12 any truck driver to enter the TexCom site at times
13 when no one is there to discharge his truck contents
14 on his own, and why not?" And you answer, "No, the
15 facility will be manned 24 hours per day, and all
16 trucks entering the site must pass their security."

17 Who will be manning the facility 24
18 hours per day?

19 A A security force. It could be contract. It
20 could be TexCom security people.

21 Q Where will the security be located on the
22 site?

23 A I think it's right at the front gate. You
24 would have to check in at that point.

25 Q Is this shown somewhere in the application?

1 A I thought it was at -- I thought it was on
2 one of the figures, yes.
3 JUDGE WALSTON: You thought it was on
4 what?

5 A One of the figures.

6 Q (By Ms. Stewart) It is your testimony that
7 security guards will be at this site 24 hours a day,
8 365 days per year?

9 A Yes.

10 Q And will the entire perimeter of the property
11 be fenced?

12 A I don't know if the entire property -- that's
13 27 acres. Okay? There will be a decision on security
14 fencing, you know, over a portion of the site, I
15 believe, so what I would call the active portion, you
16 know, where trucks, people would be, yes, that would
17 be fenced. Access would be restricted, but I can't
18 sit here and tell you it's 27 acres. That's the
19 entire property, is 27 acres.

20 Q How high will the fencing extend? What will
21 be the height?

22 A Well, if it's a normal cyclone-type of
23 fencing, it would probably be six foot.

24 Q In your opinion, is that sufficient to
25 discourage entry?

1 A Oh, yes.

2 Q How many gates will be located on the
3 property?

4 A I think three gates would be located on the
5 property.

6 Q Will all three gates be manned by security
7 guards or other personnel?

8 A The security would be there. Now, the gates
9 themselves, at night, there may be, you know, camera
10 security or something like that, but the site will be
11 manned 24 hours. So there's always on-site security.
12 There's various ways to do that.

13 Q Mr. Brassow, how will the trucks that will be
14 coming to the facility to unload the waste, how will
15 they actually access the surface facility?

16 A They will come into the truck gate or
17 entrance gate. I think there's a separate personnel
18 gate that we've set up where just people could come
19 in, but the truck gate will come in at that point.

20 He would have -- there would be a check
21 point there for the truck, you know, to show
22 documents, manifests, whatever, and there would be a
23 screen at that point; you know, is this guy scheduled
24 to be here. If yes, proceed to the next point. The
25 next point would be the unloading area and then the

1 process starts.

2 Q So you just mentioned, the question might be
3 asked, "Is this guy scheduled to be here?" So there
4 could be some scheduling?

5 A There could be scheduling, yeah. I'm just
6 saying it's not necessary, you know, an industry
7 standard that X, Y, Z truck shows up at A, B, C time.
8 It's just --

9 Q Where is the truck gate -- what I'll call the
10 truck gate, where is that to be located?

11 A Right now it's shown on the figures as right
12 there at Creighton Road.

13 Q Okay. Did you conduct any sort of traffic
14 study for Creighton Road as you prepared this surface
15 facility application?

16 A I did not conduct a formal truck study, no.

17 Q Did you hire any consultant to do such a
18 study?

19 A No.

20 Q Is that something that's typically done when
21 a surface facility such as this is planned in a
22 residential-type area?

23 A I don't think it's a residential-type area,
24 but it all depends on where your -- it all depends on
25 various factors. You know, 3083 is an FM road and

1 it's highly traveled.

2 You know, referring to a different
3 project I worked at, we actually did a study --
4 actually, the state highway department did the study,
5 and the impact of trucks comparable to TexCom was very
6 small.

7 Q But you, in developing the surface facility
8 application, all the schematics, all the plans, show
9 Creighton Road as the entrance to this surface
10 facility?

11 A At this time, yes.

12 Q So you're qualifying that by saying "at this
13 time." Is that going to change?

14 A Well, I don't know. I mean, there was
15 testimony the other day about the possibility of
16 bringing the access road off of 3083, and if the
17 access road is developed off of 3083, then there would
18 be a slight change there. That would become the truck
19 entrance off of FM 3038, but I don't think any
20 decision has been made as to that point.

21 Q But the surface facility application
22 materials right now all contain information concerning
23 Creighton Road. Correct?

24 A That's correct.

25 Q Are you -- excuse me. Did you do any

1 research to determine if there was weight rating for
2 Creighton Road, a truck weight rating?

3 A I did not.

4 Q Would that be something that would be
5 typically performed, that type of research, when a
6 surface facility application is being prepared?

7 A Well, you would certainly look at it.

8 Q Do you know the width of Creighton Road?

9 A If it's a standard road -- from my
10 observation, it appeared to be about 22-, 24-foot
11 wide, two lanes.

12 Q Does the area of Creighton Road that provides
13 access to this facility, does it have paved shoulders?

14 A No.

15 Q Would you generally describe the type of
16 development that exists along the portion of the road
17 where the surface facility is planned?

18 A Well, when you turn on Moorehead Road and are
19 about to turn onto Creighton Road, there's a Valero
20 gas station, so that's certainly commercial. I think
21 there's a commercial facility behind this gas station,
22 and I think there is a building across from the
23 current gate that's on Creighton Road. I don't know
24 that it's a residence or not.

25 Q Okay. Let's turn to Page 12 of your prefiled

1 admitted.

2 (AP Exhibit No. 10 admitted)

3 Q (By Ms. Stewart) Mr. Brassow, based on
4 Attachment 22, could you please walk the Court through
5 the general procedure a truck will follow once it
6 enters the facility off Creighton Road, starting with
7 the waste vehicle access gates?

8 A Yes.

9 Q I know this is small. I hope everyone can
10 see it.

11 A Ready?

12 Q Yes. Thank you.

13 A Start with our little sunshine north arrow up
14 in the upper right-hand corner, there's a -- it says
15 "Survtech," and there's a -- looks like a plum bob.
16 That is essentially Creighton Road.

17 So currently the trucks would come down
18 Creighton Road to that first corner and would turn
19 right if you're looking from the top of the facility.
20 If you're looking at it, turn left into the facility,
21 through the gate and that would be the truck access
22 point.

23 On your right, you see a small
24 depression area that's shaded. That's a small, little
25 pond, and you'll see essentially a crude

1 testimony, starting with Line 16. You were asked,
2 "Where in the surface facility application a map is
3 located showing the location of the surface facility
4 on the TexCom property," and you reference Attachment
5 22. Is that correct?

6 A Yes.

7 MS. STEWART: May I approach the
8 witness?

9 JUDGE EGAN: Yes, you may.

10 MS. GOSS: Do you know what volume that
11 is in?

12 JUDGE EGAN: I'm sorry.

13 MS. GOSS: I asked Ms. Stewart if she
14 knew what volume that was in.

15 MS. STEWART: Volume 11, TexCom
16 Exhibit 39, Page 97 is Attachment 22, which I will
17 also pass out to everyone.

18 (AP Exhibit No. 10 marked)

19 MS. STEWART: I would like to offer AP
20 Exhibit 10 into the record as a copy of the Attachment
21 22, which is attached to TexCom's surface facility
22 application.

23 JUDGE EGAN: Any objection?

24 (No response)

25 JUDGE EGAN: Then AP Exhibit No. 10 is

1 horseshoe-shaped access road that's there now.

2 The truck would follow that access road
3 around and come down to the rectangular cross-hatched
4 area, which is the -- that's the MCA and the truck
5 unloading area. Next to the roadway you see that is
6 the side where the truck unloading area is and in back
7 of it is the MCA.

8 Trucks would back into that point,
9 discharge the wastes, and then come back on the road
10 and leave the site going to the right and would pass
11 the three small buildings at that point back onto
12 Creighton Road, then take a left on Creighton Road
13 back up to 3083.

14 Q You've just testified that the access road is
15 constructed. Correct?

16 A There's a piece of road there now. It will
17 probably be improved.

18 Q And you mentioned that at the -- you're
19 calling it the MCA, the main containment area; the
20 trucks will turn around and back into the area?

21 A Yes, the truck unloading area is on the front
22 side of that MCA, so they would turn out and back in,
23 yes.

24 Q At what point upon arrival will samples be
25 taken from these trucks?

1 A When they back into the unloading station.
 2 Q How will these samples be delivered to the
 3 laboratory?
 4 A Personnel will pick it up, put it in a sample
 5 container, take it to the laboratory.
 6 Q Have you identified which personnel will do
 7 this?
 8 A It would be the lab chemist, I'm sure, or one
 9 of his technicians.
 10 Q What distance will that be -- how many feet
 11 will the main containment area be located from the
 12 laboratory?
 13 A It looks to be about 200 feet, maybe
 14 250 feet.
 15 Q They would be actually carrying --
 16 A Yes.
 17 Q -- the sample from the truck to the
 18 laboratory?
 19 A Yes.
 20 Q Looking -- let me direct your attention to
 21 another portion of Attachment 22, and this is the area
 22 where FM 3083 is shown. How wide is the entrance from
 23 the TexCom property from 3083?
 24 A From the scale in the upper sunshine north
 25 arrow, it looks like the frontage -- well, it says

1 72.92 feet so --
 2 Q How far would the trucks travel before they
 3 would make a very sharp turn to the left based on this
 4 drawing?
 5 A At least 111.12 feet.
 6 Q Then would you consider that to be basically
 7 a 90-degree turn? How would you characterize that
 8 turn that they would have to take based on the
 9 contours of the TexCom property?
 10 A I don't consider that to be a problem. In
 11 other words, the distance is longer than the length of
 12 the truck, and you can just make that turn. You can
 13 make the curve as sharp or as shallow as you want at
 14 that point.
 15 Q Then, again, once the trucks enter off 3083,
 16 if that indeed is to be the change that's been
 17 discussed in Dr. Ross' testimony yesterday, how far a
 18 distance would the trucks have to travel to reach the
 19 current location of the surface facility location as
 20 is shown on Attachment 22?
 21 A It would appear to be about 1,100 feet.
 22 Q So if the schematic of this surface facility
 23 is kept the same as what's shown on Attachment 22,
 24 trucks entering the facility off 3083 would have to
 25 travel about 1,100 feet to reach the office,

1 laboratory, and they would be required to turn around
 2 somewhere on the facility. Is that correct?
 3 A Well, let's assume hypothetically that the
 4 truck is just following that one line that says -- you
 5 know, it's a survey call point. So I think it's the
 6 property -- it's actually one of the eastern property
 7 lines of the TexCom tract. Where the 1,105.65-foot
 8 dimension is, if the truck just followed that fence
 9 line, it will come to the MCA area and nothing else
 10 would change. It would simply still turn out and back
 11 in.
 12 All it is -- the point of entry to the
 13 truck unloading area would change, but the truck
 14 unloading area and everything associated with the
 15 surface facilities doesn't change at all, just the
 16 roadway.
 17 Q But by that schematic then, the truck
 18 completely bypasses the office. Is that correct?
 19 A It doesn't have to. I mean, when the truck
 20 leaves or -- I'm not sure I follow your point. It
 21 doesn't have to. I mean, we're talking about the
 22 routing of a truck on a piece of property owned by
 23 TexCom. So if the office or the laboratory or
 24 something like that becomes more convenient to change
 25 its location, that can be done without even changing

1 the location of the surface facilities at all. The
 2 only reason it's shown right now next to Creighton
 3 Road is because under this application, that is the
 4 entrance and exit point for the trucks onto the site.
 5 If that entrance point changed, the office location
 6 can change, if necessary.
 7 Q Does the surface facility application address
 8 containment of a spill that could occur after a truck
 9 enters the facility property but before it reaches the
 10 offloading area?
 11 A I don't think it addresses that because
 12 that's not a high probability.
 13 Q Would that probability increase the more a
 14 truck would have to actually travel within the TexCom
 15 property to reach the offloading area?
 16 A No.
 17 Q You had testified earlier about a process
 18 flow diagram. Do you recall where that's located in
 19 the application?
 20 A They're in the Exhibits 21, 22, that set and
 21 following. There's a series of process flow diagrams
 22 in there.
 23 Q Do you know if that -- what you're referring
 24 to shows the location of the injection wells in
 25 relation to the surface facility, specifically the

1 distance that the injection wells are located from the
2 surface facility?

3 A Actually, the exhibit that you just showed
4 me, or you just gave me, shows that well in
5 relationship to the surface facilities, and it appears
6 to be about 300 feet.

7 Q You had discussed the composition of the
8 pipes that will carry the waste from the surface
9 facility to the injection wells with Mr. Gershon.
10 Correct?

11 A Yes.

12 Q You testified that will probably be sealed?

13 A Yes.

14 Q Do you know which of the injected chemicals
15 that are proposed to be disposed in the waste wells,
16 do you know which potentially corrode steel, if any?

17 A Actually, I don't think any of them will
18 really corrode steel. Now, let me qualify that
19 statement.

20 We're accepting wastes that can have or
21 may have, you know, pH levels at about three. You
22 would call that an acidic waste, but it's not a
23 terribly aggressive acid waste. The corrosion of any
24 steel pipe, depending on its alloy, is really a
25 function of how long the contact of that material is

1 within the pipe.

2 So if you accepted something, say, as
3 low as three -- and that's one of the criteria for the
4 injectate, the time it takes to leave the pump to a
5 wellhead is very short. It's a matter of probably
6 less than a minute or so.

7 Q Along those same lines, is there any sort of
8 containment measures that are shown in the application
9 to -- if a spill should occur from the pipes that are
10 carrying the wastewater from the surface facility to
11 the injection wells?

12 A Not a containment measure. It's covered
13 under the inspection. There's an aggressive
14 inspection program in which those pipes are inspected,
15 I think, on a daily basis. So if there's any
16 indication of corrosion or deterioration, then steps
17 are taken accordingly.

18 Q Are those pipes to be located aboveground?

19 A They can be located aboveground. There's --
20 again, there's two ways of looking at that. If the
21 pipes are buried, they're actually protected. Believe
22 it or not, pipes become targets for some people. They
23 like to shoot them, and so if they're belowground, you
24 protect the pipes from vandalism and possible, you
25 know, destruction.

1 And if they're aboveground, they're much
2 more easily inspected. And so the final decision
3 hasn't been made, and if so, whether they will be on
4 pipe racks or sleepers.

5 Q When will that decision be made?

6 A Before construction.

7 Q Let's go back just a little bit. We were
8 just talking about corrosive effects of the injected
9 wastewater.

10 On Page 27 of your prefiled testimony,
11 Lines 11 through 12 -- actually, I think that's the
12 wrong reference.

13 You testified in your prefiled
14 testimony -- and I typed in the wrong reference --
15 that the wastewater -- non-hazardous wastewater such
16 as that TexCom proposes to handle is generally
17 innocuous.

18 A That's correct.

19 Q This reference is correct. On Page 19 of
20 your prefiled testimony, Lines 16 through 18, you
21 reference an EPA database that has been created to
22 determine the composition of what you characterize as
23 the most generally injected waste fluids at Class I
24 wells. Is that correct?

25 A Which lines are you referring to?

1 Q You begin at Line 16, after the period,
2 "Additionally, EPA has recently created a database for
3 determining the composition of the most generally
4 injected waste fluids at Class I wells," and you give
5 a reference in the application.

6 A Okay.

7 Q Page 19.

8 A Yes, I see that.

9 MS. STEWART: If I may approach, I would
10 like to offer this table that's referenced as an
11 exhibit, AP Exhibit 11.

12 (AP Exhibit No. 11 marked)

13 Q (By Ms. Stewart) Mr. Brassow, did you
14 prepare this table based on the EPA information, or is
15 this a copy of the EPA table?

16 A I think that it may be a copy. I'm not sure.
17 I think the actual preparation of the table
18 Mr. Blanchard did.

19 Q Does the EPA's characterization of some of
20 these referenced chemicals which could be contained in
21 Class I wastestreams, does the characterization of
22 those as "strong oxidizers, enhance chemical
23 corrosion," seem innocuous to you?

24 A These don't seem innocuous.

25 Q So the characterization that sodium chloride

<p style="text-align: right;">Page 519</p> <p>1 enhances electrochemical corrosion --</p> <p>2 A Sodium chloride is salt. It's brine.</p> <p>3 Q "Sulfates can react to form minor amounts of</p> <p>4 acid, nutrient for bacterial growth," does that sound</p> <p>5 innocuous?</p> <p>6 A Repeat that, please. Sodium sulfate?</p> <p>7 Q Sulfates. I'm reading under "dissolved</p> <p>8 species," under the fourth category, "Sulfates can</p> <p>9 react" --</p> <p>10 A Yes.</p> <p>11 Q Does that seem innocuous?</p> <p>12 A Yes, it does.</p> <p>13 Q Finally, on Page 17 of your prefiled</p> <p>14 testimony, Lines 8 through 9, you state that the</p> <p>15 surface facility TexCom proposes to operate will be</p> <p>16 regulated primarily under the Health & Safety Code,</p> <p>17 Chapter 361, and Chapter 335 of TCEQ's rules. Is that</p> <p>18 correct?</p> <p>19 A I think that's -- that's what I said, yes.</p> <p>20 Q And then you state that, "The vast majority</p> <p>21 of the regulations in 335 apply only to facilities</p> <p>22 that handle hazardous wastes." Is that correct?</p> <p>23 A That's what I said, yes.</p> <p>24 Q Mr. Brassow, do you know whether</p> <p>25 Administrative Code 335.4, Section 2, applies to</p>	<p style="text-align: right;">Page 521</p> <p>1 general terms means?</p> <p>2 Q (By Ms. Stewart) I believe I would like you</p> <p>3 to answer in your position as a lawyer, which might</p> <p>4 be --</p> <p>5 A Well, let me answer it in terms of, you know,</p> <p>6 what I would call the general term. To me, a nuisance</p> <p>7 is something that is obnoxious. In other words, if</p> <p>8 you -- if there was a dead dog on the side of the road</p> <p>9 and you were right there, that could become a very</p> <p>10 obnoxious thing. That's a nuisance to have it there.</p> <p>11 Just because you don't like a particular</p> <p>12 element or don't like a particular event or something</p> <p>13 like that, that in and of itself doesn't create a</p> <p>14 nuisance. I'm not sure that there is a very</p> <p>15 definitive term for "nuisance," and I don't think I</p> <p>16 can elaborate any more than that.</p> <p>17 Q I appreciate your -- I appreciate your candor</p> <p>18 with me concerning that. I know that Mr. Gershon</p> <p>19 touched a little bit on odor and your prefiled</p> <p>20 testimony concerning the odor that might be generated</p> <p>21 by the shaker screen unit, and in your prefiled</p> <p>22 testimony, you mentioned that you had visited 20</p> <p>23 surface facility -- surface facilities while they were</p> <p>24 operating. Is that correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">Page 520</p> <p>1 TexCom's proposed facility?</p> <p>2 A 335 point --</p> <p>3 Q Four, Section 2. I can read you the --</p> <p>4 A Yeah, that would help.</p> <p>5 Q It's titled "General Prohibitions." Let me</p> <p>6 know if you can't hear me, if my voice starts to drop.</p> <p>7 It states that, "In addition to the requirements of</p> <p>8 Section 335.2 of this title, relating to permit</p> <p>9 required, no person may cause, suffer, allow or permit</p> <p>10 the collection, handling, storage, processing or</p> <p>11 disposal of industrial solid waste or municipal</p> <p>12 hazardous waste in such a manner so as to cause,"</p> <p>13 Subsection (2), "the creation and maintenance of a</p> <p>14 nuisance."</p> <p>15 A Okay.</p> <p>16 Q So does that apply to TexCom's proposed</p> <p>17 surface facility?</p> <p>18 A I suspect it does, yes.</p> <p>19 Q And are you familiar with a nuisance -- with</p> <p>20 what a nuisance would be?</p> <p>21 A I think nuisance is in the eye of the</p> <p>22 beholder.</p> <p>23 Q Okay. Could you be more specific?</p> <p>24 JUDGE EGAN: Are you asking in his</p> <p>25 position as a lawyer what a nuisance is or what the</p>	<p style="text-align: right;">Page 522</p> <p>1 Q While you were visiting those 20 facilities</p> <p>2 during the operations, did you notice any odor</p> <p>3 personally?</p> <p>4 A Not particularly. All facilities are</p> <p>5 different. Odors are derived from different material.</p> <p>6 If you're in a plant that produces a very odorous</p> <p>7 material, you will obviously smell it and probably</p> <p>8 smell it every time that you go to that particular</p> <p>9 plant site, but if you're in an area -- and I'll use</p> <p>10 the TexCom facility as an example -- receiving</p> <p>11 different wastestreams from different facilities and</p> <p>12 they have, you know, either zero odor or very low</p> <p>13 odors --</p> <p>14 JUDGE EGAN: Could you speak up just a</p> <p>15 little?</p> <p>16 A They had very little or no odors, is that to</p> <p>17 say that there may not be a load at some point that</p> <p>18 comes in that has more odor than the other? Probably.</p> <p>19 But that doesn't, in my mind, going to your nuisance</p> <p>20 questions, create a nuisance.</p> <p>21 And the mere fact that there is an odor</p> <p>22 doesn't create a nuisance. Let me give you an absurd</p> <p>23 example that some people might consider perfume to be</p> <p>24 offensive. Well, people pay lots of money for</p> <p>25 perfumes. Perfumes are, by nature, odorous, but</p>

<p style="text-align: right;">Page 523</p> <p>1 they're nice odors.</p> <p>2 MS. STEWART: Thank you. I have no</p> <p>3 further questions.</p> <p>4 MR. WALKER: I'm sorry, Your Honor.</p> <p>5 JUDGE EGAN: It looks like you may have</p> <p>6 one or two more questions.</p> <p>7 MS. STEWART: I may have one or two more</p> <p>8 questions.</p> <p>9 MR. WALKER: Could we have maybe 30</p> <p>10 seconds?</p> <p>11 JUDGE EGAN: Yes.</p> <p>12 (Brief pause)</p> <p>13 MS. STEWART: I withdraw my statement</p> <p>14 that I have no further questions.</p> <p>15 Q (By Ms. Stewart) I would like to ask you a</p> <p>16 few more questions, please, just a few. I realize</p> <p>17 it's almost 5 after 3. I apologize.</p> <p>18 If you could, turn to Page 30 of your</p> <p>19 prefiled testimony, starting at Line 16 where you're</p> <p>20 asked a question by your counsel.</p> <p>21 A Yes.</p> <p>22 Q If I may summarize that instead of reading it</p> <p>23 in an effort to save a little bit of time, is it</p> <p>24 correct for me to say that you state, "It will not be</p> <p>25 possible for TexCom to accept toxic chemicals or</p>	<p style="text-align: right;">Page 525</p> <p>1 wastestream set forth in the waste acceptance program?</p> <p>2 A That's not spelled out in specificity in the</p> <p>3 application. In the draft permit, they were required</p> <p>4 to follow either EPA's SW-846 or TCEQ's CWAP program</p> <p>5 protocol. So there is a very specific protocol for</p> <p>6 testing, and TexCom would have to follow that.</p> <p>7 Q And you said it was EPA --</p> <p>8 A SW-846, I think, is the methodology.</p> <p>9 Q And that's contained in the draft permit?</p> <p>10 A I believe it is, yes.</p> <p>11 MS. STEWART: I have no further</p> <p>12 questions.</p> <p>13 JUDGE EGAN: All right.</p> <p>14 MS. STEWART: Thank you.</p> <p>15 JUDGE EGAN: Mr. Forsberg?</p> <p>16 MR. FORSBERG: Yes, Your Honor.</p> <p>17 JUDGE EGAN: Go ahead.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. FORSBERG:</p> <p>20 Q Good afternoon, Mr. Brassow. I guess you're</p> <p>21 a doctor, but they don't call us doctors. Right?</p> <p>22 A Correct.</p> <p>23 Q You have a doctorate?</p> <p>24 A Correct.</p> <p>25 Q One thing I would like to understand is when</p>
<p style="text-align: right;">Page 524</p> <p>1 hazardous materials"?</p> <p>2 A The definition of "hazardous" and "toxic,"</p> <p>3 that's correct. They won't accept hazardous or toxic</p> <p>4 materials.</p> <p>5 Q You said, "by the definition of toxic or</p> <p>6 hazardous"?</p> <p>7 A Yes. There's a definition in the rules for</p> <p>8 hazardous and toxic materials. TexCom will not accept</p> <p>9 hazardous or toxic materials.</p> <p>10 Q Would you consider mercury to be toxic?</p> <p>11 A I think there are forms of mercury that are</p> <p>12 toxic. I don't know that anybody exposed to elemental</p> <p>13 mercury -- I think, yes, that could be toxic,</p> <p>14 elemental.</p> <p>15 Q Would you consider cyanide to be toxic?</p> <p>16 A Depends on concentrations. Different</p> <p>17 materials have different concentrations at which they</p> <p>18 would become toxic.</p> <p>19 Q Would you consider benzene to be toxic?</p> <p>20 A At certain concentrations, it would be.</p> <p>21 Q Referring to the actual application, is the</p> <p>22 method of analysis of the proposed wastestream set</p> <p>23 forth in the waste acceptance program?</p> <p>24 A Would you repeat that, please?</p> <p>25 Q Is the method of analysis of a proposed</p>	<p style="text-align: right;">Page 526</p> <p>1 you designed the flow chart of how material flows</p> <p>2 through facility -- you designed that or drew it?</p> <p>3 A Yes.</p> <p>4 Q There is a place for filtered solids to go,</p> <p>5 like a storage tank. Correct?</p> <p>6 A There are two bins there, yes; roll-off bins</p> <p>7 or something equivalent to that, yes.</p> <p>8 Q And then there is obviously the injection</p> <p>9 wells, 1, 2, 3, 4?</p> <p>10 A Injection wells?</p> <p>11 Q Yes, the proposed injection wells.</p> <p>12 A Yes.</p> <p>13 Q There's also a waste oil tank?</p> <p>14 A Yes.</p> <p>15 Q And that is -- how is the waste oil taken off</p> <p>16 site?</p> <p>17 A Well, that would be pulled off and put in a</p> <p>18 vacuum truck.</p> <p>19 Q Okay. So just so I'm clear, you take one</p> <p>20 wastestream and turn it into three?</p> <p>21 A I'm not sure I follow your question.</p> <p>22 Q Well, you have one wastestream coming in from</p> <p>23 tanker trucks that you pump into your facility, and</p> <p>24 then some of it goes to solid -- goes into a solid</p> <p>25 waste disposal, which is trucked off somewhere else.</p>

<p style="text-align: right;">Page 527</p> <p>1 Some of it goes into oil waste, trucked off somewhere 2 else, and then some of it is injected into the ground. 3 A Well, actually, the oil is recycled. 4 Q Okay. But it's not on site? 5 A No. 6 Q Okay. So it's still waste. 7 A No, not if you recycle it. 8 Q So your reference to waste oil on your own 9 map is incorrect? 10 A No, it's not incorrect. If you separate the 11 oils from the waters and collect them, you know, you 12 can recycle those oils, take them to waste oil 13 recycling. 14 Quite frankly, I think the Class II 15 wells that have been indicated here before, that's 16 pretty much standard operation to skim the crude oil 17 off the waste and recycle it also. 18 Q Are there alternatives where you could get 19 rid of all this waste at once? 20 A Yes. 21 Q What kind of storage tanks are on the 22 facility? 23 A I'm not sure I understand your question. 24 Q Let me rephrase it. Are there atmospheric 25 storage tanks on the facility?</p>	<p style="text-align: right;">Page 529</p> <p>1 There is one, two, three -- seven, eight, nine, ten, 2 11, 12, 13 -- 14 exceptions to the odor issue because 3 that's the number of tanks on your diagram. Is that 4 correct? 5 A There's that many tanks, yes. 6 Q You state that -- on your diagram of how 7 trucks enter the facility -- Ms. Stewart was referring 8 to it earlier. I don't have the exhibit number. 9 JUDGE EGAN: AP Exhibit 10. 10 Q (By Mr. Forsberg) You have trucks coming 11 into the facility off of Creighton Road? 12 A Yes. 13 Q Is Creighton Road a residential road? 14 A Creighton Road has residences on it. 15 Q Would you consider it residential? 16 A No. 17 Q Why not? 18 A Because it has other truck traffic on it 19 also. 20 Q How many trucks have you observed on 21 Creighton Road? 22 A I haven't gone out there to count them. 23 Q Then how do you know there's truck traffic on 24 Creighton Road? 25 A I guess it's an assumption that since the</p>
<p style="text-align: right;">Page 528</p> <p>1 A There are fixed-roofed vented to the 2 atmosphere, yes. 3 Q So every single one of these storage tanks 4 has a vent on them? 5 A Yes. 6 Q Is it your testimony that no odor can escape 7 from any of these vents? 8 A That's not my testimony. 9 Q Well, I thought I heard that the only 10 exception to odor was the solid waste vent. 11 A Well, you can actually have the vent that can 12 have a pressure release value on it. So it doesn't 13 have to be an atmospheric vent. You can set a half 14 pound pressure release valve or something like that. 15 So if pressure inside the tank builds up, it would 16 relieve pressure. Otherwise it's there, and nothing 17 is released. 18 Q So you're saying with a pressure valve, 19 there's absolutely no odor release? 20 A I'm not an insurance agent. I can't tell 21 you -- guarantee that there's nothing -- no odor is 22 going to be released. If there's no pressure and no 23 release to the atmosphere, then, yes, I would say 24 there's no odor. 25 Q So, in fact, there's not one exception.</p>	<p style="text-align: right;">Page 530</p> <p>1 road is there and it connects 45 over to 3086 that 2 trucks would use it. 3 Q Okay. So you would assume the trucks would 4 use 3083? 5 A No. I would assume that trucks would use 6 3083 as one of the main thoroughfares, yeah. 7 Q And that they would use Creighton Road? 8 A No. 9 Q The trucks will not use Creighton Road? 10 A Which trucks are we referring to? 11 Q The ones coming to the facility. 12 A I would assume they would not use Creighton 13 Road. 14 Q I thought on your map that's where they 15 entered the facility. 16 A Off of 3083. 17 Q On AP Exhibit 10, you're stating that the 18 facility's entrance is off 3083? 19 A No, you didn't -- I guess perhaps I should 20 restate what I said before. 21 Q Okay. 22 A I said trucks would turn off of 3083 onto 23 West Moorehead Road, which terminates at Creighton 24 Road. You turn onto Creighton Road, and within a 25 matter of a few tens of feet you enter the facility</p>

<p style="text-align: right;">Page 531</p> <p>1 where the gate is. So the gate is located and fronts 2 on Creighton Road, but trucks would come off of 3083. 3 Q Would the trucks ever come into contact with 4 Creighton Road? 5 A Yes, the way it's stated right now. 6 Q Assume with me that the facility opens at 9 7 a.m. -- just assume. 8 A Okay. 9 Q Five trucks show up at eight o'clock. Where 10 are they going to go? 11 A Probably on the shoulder of 3083 or some 12 other facilities. 13 Q Is that safe? 14 A Trucks are parking there -- parking along 15 3083 now. I can't tell you where they're parking 16 right now. If that was the case, then we would open 17 up the facility to accommodate the trucks. 18 Q Well, what is your capacity in regards to how 19 the facility is going to operate? 20 A What is my capacity? 21 Q Yes. Isn't that an operational issue? 22 A Yes. 23 Q Didn't you say earlier that you're not 24 involved in the operational issues of the facility? 25 A Not at this time. There's never been any</p>	<p style="text-align: right;">Page 533</p> <p>1 A Actually, I have some pipes and signs, and 2 it's a consideration in certain areas. 3 Q Is it a consideration in this area -- 4 A I don't know. 5 Q -- where the TexCom facility is located? 6 A I'm not being flippant, Mr. Forsberg. 7 JUDGE EGAN: I can't hear. 8 A I said I'm not being flippant. I just said 9 in my experience, you know, especially in the Beaumont 10 area, that is a concern, that people actually go out 11 and shoot aboveground pipes. So it's a factor to take 12 into consideration. 13 Am I saying that people in this area are 14 going to shoot pipes? No, I'm not saying that. 15 Q (By Mr. Forsberg) And I'm not making 16 that representation. I'm really not. I was asking as 17 a serious question whether that is a concern. And 18 what could you do to prevent pipes from being shot at? 19 A Bury them. 20 Q How do you daily inspect buried pipes? 21 A Well, you don't look at the pipe when it's 22 buried. You have other ways of inspecting or looking 23 at the pipe. You can pig the pipe occasionally. 24 JUDGE EGAN: You can what? 25 A Pig it. It's a tool that you run through the</p>
<p style="text-align: right;">Page 532</p> <p>1 discussion on the operational issues. 2 Q So you can't say the facility will open up 3 early to accommodate the trucks? 4 A I can't say that they will. You asked me 5 what I thought. 6 Q You estimated, I think, that at a maximum, 7 the number of 90 trucks would come into the facility 8 per day. Is that correct? 9 A At the maximum theoretical capacity at the 10 facility, yes. 11 Q What size trucks are you talking about when 12 you use the number 90? 13 A I was just using about a 5,000-gallon truck. 14 Q Is that a small truck or a large truck? 15 A That's a large truck. 16 Q So there actually could be, you know, 200 17 smaller trucks, in theory? 18 A In theory. 19 Q And there's only four bays, whether the truck 20 is small or large? 21 A At this time, yes. 22 Q Are you planning for additional truck bays? 23 A No. 24 Q You said, in your experience, people like to 25 shoot pipes?</p>	<p style="text-align: right;">Page 534</p> <p>1 pipe, and it calculates the thickness of the pipe 2 wall, and they have very sophisticated tools now so 3 you can determine whether there's corrosion, 4 degradation, deterioration of the pipe. 5 JUDGE EGAN: It's called "pigging"? 6 A Pigging, P-I-G. 7 JUDGE EGAN: That's what I thought you 8 said. 9 A That's what it is. It's an old term. 10 JUDGE EGAN: Okay. 11 Q (By Mr. Forsberg) Is that a time-consuming 12 process? 13 A Depending on the length of the pipeline. 14 Q Would it be an expensive and time-consuming 15 process based upon the flow chart you've demonstrated 16 here? 17 A Time-wise it would not. It depends on the 18 type of pigging that you would use. It can become 19 very expensive on big pipelines. The tools are very 20 sophisticated. 21 Q Is there any plan for that equipment to be 22 located on site? 23 A No. 24 Q You would actually have to hire a third-party 25 company to do that?</p>

1 A Yes.
 2 Q Is that something that would be economically
 3 feasible to do on a daily basis?
 4 A Not on a daily basis, but I didn't say we
 5 were going to bury the pipelines either.
 6 Q Okay. But assuming that the decision was
 7 made to bury the pipelines, then it would not be
 8 daily -- it wouldn't be economically feasible to
 9 inspect the pipes daily?
 10 A I would not pig the pipe on a daily basis. I
 11 would inspect the exposed portions of the pipe on a
 12 daily basis.
 13 Q But not the underground?
 14 A Not the underground.
 15 Q How often would you inspect the underground
 16 portions?
 17 A Actually, industry standards call for once
 18 every five years or so. We would do it more
 19 frequently than that, but there's protective --
 20 cathodic protection that you would use on the
 21 underground pipe, and there's standard pipeline design
 22 factors that you use.
 23 Q What is underneath the pipe if it's on a pipe
 24 rack?
 25 A It would be a steel rack, that's -- if you

1 put it on pipe rack, it would be a steel rack. If you
 2 put it on sleepers, which are just low platforms, they
 3 would probably be concrete or concrete with a steel
 4 cradle.
 5 Q If it was just a pipe rack, what would stop a
 6 pipe burst or pipe break from exposing the ground to
 7 the chemicals?
 8 A If you had a burst of the pipe, it would go
 9 on the ground.
 10 JUDGE EGAN: Could you speak up, please?
 11 A I said if there was a burst of the pipe, it
 12 would go on the ground.
 13 MR. LEE: Your Honors, could we ask for
 14 a break now? I think we've been going quite awhile,
 15 and I think a break is in order.
 16 JUDGE EGAN: How much longer do you
 17 have, Mr. Forsberg?
 18 MR. FORSBERG: I would prefer to go
 19 another ten minutes or so, Your Honor, and then I
 20 should be wrapping up.
 21 JUDGE EGAN: All right. Why don't we
 22 wait until he finishes, and then we'll take a break.
 23 Q (By Mr. Forsberg) Do truckers sometimes
 24 sleep in their trucks? Do you know?
 25 A I don't know.

1 Q Just in your personal experience, have you
 2 ever heard of that happening?
 3 A I've heard of it happening.
 4 Q If a trucker rolls up to a facility at 2 in
 5 the morning and they don't want to pay for a hotel,
 6 they have the option of, I guess, just pulling
 7 alongside the road and waiting there?
 8 A I have no idea what they would do at that
 9 point.
 10 Q Because you haven't planned for what those
 11 trucks are going to do. Is that correct?
 12 A That's not a fair statement. Planning is
 13 what happens when the truck is received at the
 14 facility. We have plans for what the truck does when
 15 he is accepted at the facility.
 16 Q Okay. So you have no concern, care in the
 17 world, about what the trucks do before or after they
 18 get to your facility?
 19 A I'm not saying that. I'm just saying we have
 20 a plan for what they do outside the facility
 21 boundaries.
 22 Q So if they decide to pull up outside the
 23 facility and sleep overnight, it's not your problem.
 24 Is that right?
 25 A It's not my responsibility.

1 Q Nor is it TexCom's.
 2 JUDGE EGAN: Is that a question?
 3 MR. FORSBERG: Yes.
 4 Q (By Mr. Forsberg) When you say it's not your
 5 responsibility, are you saying it's not TexCom's
 6 responsibility?
 7 A I don't think they have the responsibility of
 8 controlling what trucks do at two o'clock at night.
 9 Q So you have between 90 maximum -- clarify
 10 that. You said a maximum of 90 big trucks, 200 little
 11 trucks. What kind of engines are they running?
 12 A I don't know.
 13 Q Aren't most trucks that size diesel powered?
 14 A Probably.
 15 Q Do they emit an odor?
 16 A Probably.
 17 Q So if you have a line of trucks coming
 18 through the facility, you have four trucks stopped at
 19 a bay, they're idling, is there going to be a
 20 consistent odor that's going to emit from those diesel
 21 engines?
 22 A I can't answer that question.
 23 Q Because you haven't considered the
 24 possibility of the odor from the diesel engines. Is
 25 that correct?

1 A That's correct.
 2 Q In your capacity as an attorney, is nuisance
 3 defined anywhere in the law in Texas?
 4 MR. LEE: Objection, Your Honor. I
 5 think this has already been asked and answered.
 6 MR. FORSBERG: No. I think he responded
 7 by saying -- giving a general response. He didn't
 8 actually answer the question as an attorney.
 9 JUDGE EGAN: Overruled.
 10 A I can't cite you where it may be defined.
 11 Q (By Mr. Forsberg) Do you have any knowledge
 12 that persistent odors from engines have ever been
 13 found by a Texas court to constitute a nuisance?
 14 A I don't know.
 15 Q Can chemicals from multiple trucks be
 16 diverted at the same time through the filtering
 17 process for solid material; meaning you have two
 18 trucks, one in Dock 1, one in Dock 2. They're both
 19 unloading at the same time. Could they both at the
 20 same time be commingled into a filter?
 21 A They can be if they're compatible.
 22 Q How do you know that they're compatible?
 23 A As part of the waste acceptance program.
 24 Q Which would require testing them prior to
 25 them being commingled?

1 A Yes.
 2 Q So you're saying that there would be no
 3 chemical commingling from the trucks prior to them
 4 being testing?
 5 A That's part of the testing protocol.
 6 Q So, yes, there would be no commingling of
 7 materials prior to them being tested?
 8 A That's correct.
 9 Q Just so I'm clear, trucks will be using, as
 10 it's currently planned, some portion of Creighton
 11 Road?
 12 A As it's currently planned, yes.
 13 Q I would like to read you a brief statement
 14 from Dr. Ross' testimony.
 15 A Okay.
 16 Q On Page 27, Line 18, of Dr. Ross' testimony,
 17 "Trucks that do visit our site are expected to use FM
 18 3083, not Creighton Road or any other residential
 19 street." Do you disagree with that statement?
 20 A No.
 21 Q So now you're saying that trucks will use or
 22 will not use Creighton Road at all?
 23 A I prefaced this before in my testimony that,
 24 you know, if the roadway off of 3083 is developed,
 25 then they wouldn't use Creighton Road. As you were

1 looking at the exhibit, the way it's stated on the
 2 exhibit, trucks come in off of Creighton Road at this
 3 point.
 4 Q Well, this exhibit, in all fairness, is what
 5 was submitted as part of the application. Correct?
 6 A That's correct.
 7 Q Has there been an exhibit submitted as part
 8 of the application showing the entrance directly off
 9 of 3083?
 10 A Not to my knowledge.
 11 Q Do trucks make noise?
 12 A Some.
 13 Q An eighteen-wheeler -- if you stand up next
 14 to 18-wheelers, there's a pretty good amount of noise,
 15 isn't there?
 16 A Yes.
 17 Q And if you have a maximum of 90 to 200 trucks
 18 a day, you're going to have a pretty persistent sound
 19 of commercial vehicles in the area. Correct?
 20 A Yes.
 21 Q And the closer you are to residential -- the
 22 closer you are to the actual trucks, the louder the
 23 noise is going to be?
 24 A If you stack up all of those assumptions
 25 together, yes.

1 Q And those are assumptions that you didn't
 2 consider when you were planning the facility?
 3 A Those are assumptions that you put together.
 4 Q That you didn't consider when you were
 5 planning the facility.
 6 JUDGE EGAN: Hold on. Just answer his
 7 question. Did you or did you not consider the
 8 assumptions he's postulating?
 9 A I did not consider that possibility.
 10 JUDGE EGAN: Anything further,
 11 Mr. Forsberg?
 12 MR. FORSBERG: Just a couple of brief
 13 questions, and I'll be finishing up, Your Honor.
 14 Q (By Mr. Forsberg) As trucks are being
 15 unloaded, is there any vapor that's displaced in any
 16 tanks?
 17 A Vapor being displaced from the tanks. It
 18 would go back, again, to the final design of any
 19 venting on the tanks. If you had a pressure relief
 20 valve, then you could put fluids into the tank. Any
 21 air in the tank would be slightly compressed, and
 22 nothing would be released. So it wouldn't be
 23 displaced under those circumstances.
 24 Q You're saying a tank doesn't have to have a
 25 vent. Is that what you're saying?

<p style="text-align: right;">Page 543</p> <p>1 A No. I'm just saying the vent can have a 2 pressure relief valve. 3 JUDGE EGAN: He testified to that 4 previously. 5 MR. FORSBERG: Okay. I'm sorry. Thank 6 you, Your Honor. I'll pass the witness. 7 JUDGE EGAN: All right. We'll take a 8 ten-minute break and reconvene at, I guess, 20 till. 9 (Recess: 3:29 p.m. to 3:43 p.m.) 10 JUDGE EGAN: All right. We're back on 11 the record. 12 Ms. Collins, are you ready to proceed? 13 MS. COLLINS: I am. I have no 14 questions. 15 JUDGE EGAN: You have no -- 16 MS. COLLINS: I have no questions. 17 JUDGE EGAN: Okay. And are you ready to 18 proceed for the ED? 19 MS. GOSS: Yes. The Executive Director 20 has no questions. 21 JUDGE EGAN: Okay. Any further 22 questions? 23 MR. LEE: I do have just a couple of 24 questions. 25 JUDGE EGAN: All right.</p>	<p style="text-align: right;">Page 545</p> <p>1 MR. GERSHON: May I respond to that, 2 Your Honor? 3 JUDGE EGAN: Yes. 4 MR. GERSHON: Unless you're -- well, my 5 response is that evidence relates to impeachment of 6 Dr. Ross' testimony. It has nothing to do with the 7 cross-examination that occurred today. So, therefore, 8 redirect is inappropriate under the rules of evidence. 9 JUDGE EGAN: Your objection is 10 sustained. 11 MR. LEE: Okay. 12 JUDGE EGAN: You need to move on to the 13 next subject. 14 MR. LEE: Okay. Your Honor, I do have a 15 question, just to clarify the objection and your 16 ruling. We really would like to address this issue, 17 and we intend to do so on rebuttal if we're not 18 allowed to do so now. Will it be acceptable to do it 19 on rebuttal? 20 JUDGE EGAN: Depending on whether or not 21 this relates to any evidence, other than the questions 22 to Dr. Ross, but I assume so. 23 MR. LEE: So if things stay the way they 24 are now, presumably we would be allowed to -- 25 JUDGE EGAN: Well, at this point, I</p>
<p style="text-align: right;">Page 544</p> <p>1 REDIRECT EXAMINATION 2 BY MR. LEE: 3 Q Mr. Brassow, were you here yesterday in the 4 courtroom? 5 A I came into the courtroom rather late, but, 6 yes. 7 Q You were here when Dr. Ross was testifying 8 yesterday? 9 A Yes. 10 Q Do you recall there were -- there was a 11 question raised, and there was actually an exhibit 12 offered by the groundwater district that involved a 13 sanction taken by the engineering licensing board? 14 MR. GERSHON: Objection, Your Honors. 15 Is this appropriate redirect? I mean, this wasn't 16 raised during the cross-examination. 17 JUDGE EGAN: This wasn't brought up -- 18 right. 19 MR. LEE: I understand, Your Honors. If 20 I could just have a minute to explain, I do think it's 21 unfair that Mr. Brassow was -- basically suffered a 22 character attack or attack on his qualifications 23 yesterday through another witness, and he hasn't had a 24 chance to explain, and I would like to give him a 25 chance to respond.</p>	<p style="text-align: right;">Page 546</p> <p>1 don't believe -- on rebuttal, we'll take it up at that 2 time, but at this point, I assume so, but let's deal 3 with the issue at the time and give the parties an 4 opportunity to object. 5 MR. RILEY: May I be heard on this? I'm 6 sorry. It's a bit out of order, I know, and Mr. Lee 7 is presenting the witness, but the issue is a courtesy 8 issue, because at this point we did not anticipate 9 calling Mr. Brassow on rebuttal in Austin, which is 10 our expectation. He is in Houston, and we had talked 11 about the courtesy of taking witnesses out of order on 12 other circumstances. So rather than having 13 Mr. Brassow come to Austin on the rebuttal case to 14 answer probably five or ten minutes' worth of 15 questioning on this subject matter, can we take that 16 evidence now? 17 MR. GERSHON: May I respond to that, 18 Your Honors? Dr. Ross would be the appropriate 19 rebuttal witness, but we're talking about rebuttal to 20 the district's case. 21 I don't -- I don't understand how they 22 can present even Dr. Ross -- and certainly Mr. Brassow 23 wouldn't be the appropriate witness to provide that 24 rebuttal, but we're talking about rebuttal of our 25 case. I mean, we're still on their case. We're</p>

1 cross -- that was a cross-examination of their case.
2 Rebuttal is inappropriate.

3 One thing my co-counsel reminded me --

4 JUDGE WALSTON: Hang on a second.

5 JUDGE EGAN: I'm sorry.

6 MR. GERSHON: Mr. Brassow is not
7 identified as a rebuttal witness anyway. I mean, just
8 to further --

9 JUDGE EGAN: I'm not too concerned
10 about, given the nature of some of what -- they've
11 left rebuttal open.

12 My inclination would be to permit him to
13 respond to rebuttal, and I believe it's also Judge
14 Walston's position as well. The concern is the
15 courtesy issue, and if -- knowing what my ruling is
16 going to be on rebuttal, do you have any problem with
17 him testifying to it now, or if you do, and you don't
18 want it done that way, then perhaps we could take his
19 testimony telephonically if those are the only
20 questions that are going to be asked on rebuttal.

21 MR. RILEY: We can address the courtesy
22 issue, and frankly, it will be extended just the same
23 way to the other parties if there is a strong
24 objection, but we're happy to bring Mr. Brassow to
25 Austin if somehow the courtesy cannot be extended by

1 the other parties.

2 JUDGE WALSTON: Do the other parties
3 have an objection to doing rebuttal at this point?

4 JUDGE EGAN: Mr. Gershon?

5 MR. GERSHON: Just a moment.

6 (Brief pause)

7 MR. GERSHON: I understand your
8 position. We don't have a problem with proceeding
9 right now.

10 JUDGE EGAN: All right. Then go ahead.

11 MR. LEE: Okay. I will be brief.

12 JUDGE EGAN: This is going to be
13 anticipated as rebuttal but as a courtesy is being
14 taken out of order.

15 MR. LEE: Yes, Your Honor. Thank you.

16 Q (By Mr. Lee) Mr. Brassow, just to pick up
17 where we left off, you remember there was questions
18 asked of Dr. Ross of whether he had any knowledge of a
19 sanction that was taken by the engineering licensing
20 board with respect to your engineering license. Do
21 you recall those questions?

22 A I came in at the tail end of those questions,
23 but I understood they're there and that there was some
24 questions about that particular -- about that
25 particular sanction, yes.

1 Q Okay. I would just like to ask you, if you
2 could, please describe in your own words what were the
3 circumstances that gave rise to that action that was
4 referred to in that document.

5 A I had inadvertently left my -- I did not send
6 in my fees to the engineering licensing board at the
7 right time in 1998, and it's just one of those things
8 that fell through the crack, quite frankly. And we
9 were submitting information to the TCEQ in a
10 proceeding in which I sealed a figure, and it was
11 brought to my attention that, you know, my license had
12 expired, and I said I would take care of it
13 immediately.

14 I contacted the board and submitted my
15 fees, was reinstated. What the board didn't say was
16 that the reinstatement was for three weeks due to a
17 date, and I immediately sent in my other fees for the
18 following year. In the interim two days between
19 sending in the fee and receipt, I had signed and
20 sealed another document for the TCEQ, and the board
21 took the position that because they didn't post the
22 check, I was still -- my license was still expired,
23 and that was the basis of their complaint.

24 Q So is it correct to say that when you found
25 out about the circumstance, you immediately took

1 action to reinstate your license, and it was
2 reinstated. Correct?

3 A Absolutely.

4 Q And when you did the work for the TexCom
5 surface facility application, you were fully licensed
6 as a professional engineer in the state of Texas.
7 Correct?

8 A Absolutely.

9 Q And in good standing with the licensing
10 board?

11 MR. GERSHON: Your Honors, I just need
12 to make an objection for the record. I mean, the
13 rebuttal is to Dr. Ross' understanding of the
14 situation and the credentials of his witness.

15 JUDGE EGAN: I understand. Your
16 objection is overruled, but you need to limit the
17 question.

18 MR. LEE: Okay.

19 Q (By Mr. Lee) My last question was just did
20 you -- when you affixed your engineering seal to the
21 TexCom surface facility application, you were in good
22 standing with the licensing board. Correct?

23 A Absolutely.

24 Q Okay.

25 MR. LEE: I have a document that I'm

<p style="text-align: right;">Page 551</p> <p>1 going to hand out and mark this as TexCom Exhibit 2 No. 70. 3 (TexCom Exhibit No. 70 marked) 4 Q (By Mr. Lee) Do you have a copy of TexCom 70 5 in front of you? 6 A I will in one second. 7 Q What is this document? 8 A It's a copy of the Court of Appeals case, 9 14th district. The style is the state of Texas, 10 appellant, vs. Malone Surface Company, Arthur Lee 11 Malone and Larry Malone, appellees. 12 Q And the case citation is 853 S.W. 2d 82. 13 Correct? 14 A That's correct. 15 Q I would like to ask you to turn to Page 4 of 16 that document. 17 A Okay. 18 Q In the left-hand column about -- in the first 19 paragraph that's on there that's continued from the 20 previous page, if you look down about halfway, there's 21 a sentence that begins with your name, Carl Brasso. 22 A Yes, I see it. 23 Q I'll represent to you that this is the only 24 reference to you in this case decision, and I would 25 like you to just read aloud the sentence that begins</p>	<p style="text-align: right;">Page 553</p> <p>1 you have that objection, go ahead and raise it. 2 MR. FORSBERG: Thank you. 3 JUDGE EGAN: At this point he's just 4 asked him to read that sentence -- 5 MR. FORSBERG: Okay. 6 JUDGE EGAN: -- from the document. 7 Q (By Mr. Lee) Would you please read it, 8 Mr. Brasso? 9 A "Carl Brasso, MSC's engineering consultant, 10 admitted that as early as June 1982, he believed there 11 was groundwater contamination coming from the pit." 12 Q Is that a true statement? 13 A That's a true statement. 14 MR. FORSBERG: Objection, Your Honor. 15 JUDGE EGAN: Sustained. 16 Q (By Mr. Lee) Could you please describe the 17 circumstances that gave rise to -- that underlie this 18 statement? 19 MR. FORSBERG: Objection, Your Honor; 20 same objection. We would need the record of this case 21 in order to look at this. All we have is the 22 statement of the Appeals Court in front of us with no 23 one from the Appeals Court to say what they considered 24 in making the opinion. 25 MR. LEE: Your Honor, I'm just asking</p>
<p style="text-align: right;">Page 552</p> <p>1 with "Carl Brasso." 2 MR. GERSHON: Your Honor, I just -- for 3 the record, I want to make a running objection to this 4 line of testimony. This is not designed to address 5 Dr. Ross' testimony. 6 JUDGE EGAN: You've got a running 7 objection. It's overruled. Go ahead, although this 8 is a legal document, and I believe you gave us the 9 citation to it yesterday. 10 MR. GERSHON: Oh, and I have no problem 11 with this document being in -- well, recognized by 12 Your Honors or the Commission. What I'm objecting to 13 is the line of questions. 14 JUDGE EGAN: Go ahead. 15 MR. FORSBERG: Your Honor, can I make an 16 objection as well? 17 JUDGE EGAN: Yes. 18 MR. FORSBERG: I would just like to 19 object to the extent they're going to be asking him 20 about his testimony, the only document we have is 21 this, and if he's going to testify that "I didn't say 22 that," I think we need the entire record of the appeal 23 of this case and his testimony in his deposition. 24 JUDGE EGAN: I don't know what Mr. Lee's 25 question is, but as soon as he raises the question, if</p>	<p style="text-align: right;">Page 554</p> <p>1 for his knowledge of his experiences. He was a 2 witness that gave testimony in the case that led up to 3 this appeal. 4 MR. FORSBERG: Then where is the 5 testimony? 6 MR. LEE: I'm asking him what his -- 7 JUDGE EGAN: Hold on. Just direct your 8 comments to me, please. 9 MR. LEE: Okay. I just want to ask 10 him -- I'm just going to ask him one question, which 11 is, what were the -- please explain the circumstances 12 that led to this statement that's in this court 13 decision. 14 MR. FORSBERG: He cannot answer -- 15 MR. LEE: I just want to know his 16 personal knowledge of what happened. 17 MR. FORSBERG: He cannot answer that, 18 Your Honor -- 19 JUDGE EGAN: Sustained. 20 MR. FORSBERG: -- because it's the Court 21 of Appeals -- 22 JUDGE EGAN: Sustained. 23 MR. FORSBERG: Thank you. 24 MR. LEE: We have no further questions. 25 JUDGE WALSTON: Were you going to offer</p>

1 that into evidence, or take official notice?
 2 MR. LEE: Yes, please. Thank you.
 3 Thank you, Your Honor.
 4 JUDGE EGAN: Then any objections to
 5 TexCom Exhibit No. 70?
 6 (No response)
 7 JUDGE EGAN: None. Then it's admitted.
 8 (TexCom Exhibit No. 70 admitted)
 9 MR. LEE: We have no further questions.
 10 JUDGE EGAN: Any further questions from
 11 Lone Star?
 12 MR. HILL: No, Your Honor.
 13 MR. FORSBERG: No, Your Honor.
 14 JUDGE EGAN: Then you're excused.
 15 A Thank you, ma'am.
 16 JUDGE EGAN: Thank you.
 17 Would you like to call your next
 18 witness?
 19 MR. RILEY: We actually don't have any
 20 more witnesses.
 21 JUDGE EGAN: Would you like to offer the
 22 written depositions?
 23 MR. RILEY: Yes, ma'am. We would like
 24 to offer into the record in the TexCom direct case
 25 TexCom Exhibits 62 and 63, which are depositions on

1 written question taken of certain TCEQ personnel.
 2 JUDGE EGAN: Exhibit 62, which is
 3 Kathryn Hoffman's written questions, there was no
 4 objection filed to this previously. It is admitted.
 5 TexCom Exhibit No. 63, which is the
 6 written questions -- deposition questions of Michael
 7 D. Graeber --
 8 MR. RILEY: Graeber.
 9 JUDGE EGAN: -- Graeber, likewise had no
 10 objection so it is admitted as well.
 11 (TexCom Exhibit Nos. 62 and 63 admitted)
 12 JUDGE EGAN: Anything further from
 13 TexCom?
 14 MR. RILEY: No, Your Honor. That is
 15 TexCom's direct case.
 16 JUDGE EGAN: Let me make sure I know the
 17 order that the parties are going to be presenting. Is
 18 it Lone Star first, the same order that we've been
 19 doing the cross-exams?
 20 MR. GERSHON: Right.
 21 JUDGE EGAN: All right. And just before
 22 we go on, let me make sure. Did you have a chance to
 23 look at the verification of that last exhibit, exhibit
 24 number -- Lone Star Exhibit No. 19? If you haven't,
 25 that's fine.

1 MR. RILEY: I really haven't had a
 2 chance. I will clean that up before tomorrow morning
 3 or tomorrow.
 4 JUDGE WALSTON: I just note that on my
 5 notes, I didn't show that one being subject to
 6 verification.
 7 MR. RILEY: We have the same notes, but,
 8 again, let me take a look at it and just confirm.
 9 JUDGE WALSTON: 17 and 18 I had written
 10 down.
 11 JUDGE EGAN: No. 19 I had written down.
 12 MR. RILEY: I think I might have had
 13 some --
 14 JUDGE EGAN: Subject to verification.
 15 It was a letter from TCEQ, so you just wanted to make
 16 sure it was an exact copy.
 17 MR. RILEY: And I wanted to make sure it
 18 was -- that was the exact part.
 19 JUDGE EGAN: That was my recollection.
 20 All right.
 21 Is Lone Star ready to proceed with its
 22 direct case?
 23 MR. GERSHON: We certainly are, Your
 24 Honors. Our intentions are to begin with our first
 25 witness as is in the order of our prefiled testimony.

1 That said, depending how -- well, I'll tell you what.
 2 Our second witness is Ray Shull, and it
 3 looks like we'll be getting to Mr. Shull before the
 4 end of the week, so this is going to work.
 5 We might need to take our third expert
 6 out of order in order to allow Ms. Hoffman to provide
 7 testimony tomorrow. It's my understanding that --
 8 MR. WILLIAMS: Monday.
 9 MR. GERSHON: I thought that she needed
 10 to be put on by tomorrow. If it's Monday, then this
 11 will work in order. So we would call Ms. Kathy Turner
 12 Jones at this point.
 13 PRESENTATION ON BEHALF OF THE
 14 LONE STAR GROUNDWATER CONSERVATION DISTRICT
 15 (Witness sworn)
 16 JUDGE EGAN: Would you state your full
 17 name for the record?
 18 A Kathy Turner Jones.
 19 JUDGE EGAN: Can you-all hear in the
 20 back?
 21 UNIDENTIFIED SPEAKER: No.
 22 JUDGE EGAN: Mr. Gershon, are you going
 23 to be the --
 24 MR. GERSHON: Yes.
 25 JUDGE EGAN: Go ahead and proceed.

KATHY TURNER JONES,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GERSHON:

Q Good afternoon, Ms. Jones. Do you have a copy of your prefiled testimony with exhibits in front of you?

A Yes, sir.

Q Okay. And it isn't the copy that has notes or the working copy. It's an actual copy of what was just handed to the court reporter in the same form. Is that right?

A Yes, sir.

Q And let me take one step back. Ms. Jones, is it -- do I have it right that you're the general manager of the Lone Star Groundwater Conservation District?

A Yes, sir.

Q Okay. And in that capacity, did you develop the prefiled testimony that I just referred you to?

A Yes, sir.

Q Okay. Do you have any corrections to that testimony?

A Not that I'm aware of.

Q Okay. And is it your intention to offer up

and to provide that testimony as you would have provided it if you were presenting it in a live hearing?

A Yes.

MR. GERSHON: With that, I would offer up District's Exhibits 1 through 4.

JUDGE EGAN: Okay. All the objections were previously ruled on in this case. So Lone Star's Exhibits 1 through 4 are admitted.

(LS/District Exhibit Nos. 1 through 4 marked and admitted)

JUDGE EGAN: And just the way we'll go in this order will be Montgomery County/Conroe next, individual protestants after that, then the TexCom, then --

MS. COLLINS: I would probably go before TexCom.

JUDGE EGAN: Would you like to go --

MS. COLLINS: That's fine.

JUDGE EGAN: That's fine with me. And then the ED last.

So at this point any cross from Mr. Walker? Go ahead.

MR. WALKER: Thank you, Your Honor.

Protestants Montgomery County and the city of Conroe

have no questions.

JUDGE EGAN: Ms. Collins? Excuse me.

Mr. Forsberg? That's the hazard of being behind the podium where I can't see you.

MR. FORSBERG: We have no questions at this time, Your Honor.

MS. COLLINS: No questions.

MR. RILEY: That was quick.

JUDGE EGAN: Mr. Riley?

MR. RILEY: Yes. Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. RILEY:

Q Good afternoon, Ms. Jones.

A Good afternoon.

Q I just have just a few questions, and I apologize in advance of attempting to use new technology and read from the screen. So we'll see how that works out.

I understand that you've been the general manager of the Lone Star Groundwater Conservation District for five years. Is that correct?

A Yes.

Q Is it all right for purposes of our discussion this afternoon if I refer to that

organization as Lone Star just for ease of reference?

A Yes.

Q When was Lone Star actually authorized by the state of Texas?

A It was created in 2001.

Q And you've been general manager then for almost the entire time?

A Yes, sir.

Q As I understand your testimony -- your prefiled testimony, you have a degree in business. Is that correct?

A Yes, sir.

Q With a minor in finance?

A Yes, sir.

Q That will become relevant as I ask you questions about the SEC filing that you make an exhibit to your testimony. That's why I asked.

You don't have technical training in any of the sciences that have been discussed in the course of this case?

A No, sir.

Q And I think your testimony makes clear that the groundwater district relies exclusively on the consultants that it has hired in this case for its opinion regarding the protectiveness of the

1 application. Is that correct?

2 A Yes.

3 Q I did see -- and forgive me, again, because
4 of my limitations, technologically speaking -- I did
5 see where you had in your testimony that you were not
6 able to gain access to the application of TexCom prior
7 to September 2007. Is that correct?

8 A We could not get a complete copy of the
9 application prior to that time.

10 Q All right. Could you tell me all the efforts
11 you made to do that?

12 A We went to the courthouse where the volumes
13 were located. Not all of the volumes were complete.
14 It was felt like it was not a complete set.

15 We also contacted TCEQ, and it was our
16 understanding that central records had misplaced a
17 copy. The copy that the staff had at TCEQ was marked
18 up and could not become available, and we did ask for
19 copies from TexCom and were not provided them until
20 September.

21 Q Do you know when you asked?

22 A Not specifically.

23 Q Do you know how long after you asked you were
24 provided with a copy?

25 A It seemed like a long time. No, I do not

1 have that.

2 Q The essence of your testimony is that you
3 have concerns, based on your experts' opinions, about
4 whether the TexCom project could endanger a drinking
5 water source that is relied on by residents of
6 Montgomery County. Is that a fair summary?

7 A Yes.

8 Q And have you been in the hearing room for the
9 entire session since yesterday morning?

10 A Yes, sir.

11 Q And have you heard TexCom's experts testify?

12 A Yes, sir.

13 Q At some time was there an invitation extended
14 to you to meet with TexCom's experts prior to actually
15 seeing them testify in this hearing?

16 A We received a call from the county attorney's
17 office.

18 MR. GERSHON: Objection, Your Honor. If
19 counsel is trying to get information about settlement
20 opportunities, those are inadmissible.

21 JUDGE EGAN: Is this regarding the
22 settlement discussions or settlement opportunities?

23 MR. RILEY: No. It was an invitation to
24 have a technical discussion with the groundwater
25 district prior to today.

1 MR. GERSHON: That's an incorrect
2 assessment.

3 JUDGE EGAN: If it's anywhere near
4 settlement, let's avoid it.

5 MR. RILEY: I'll stay away from it, I
6 just wanted to be clear since the witness testifies
7 about their lack of knowledge and opportunity to
8 understand the extent of the TexCom project, I thought
9 it was a fair topic for examination.

10 MR. GERSHON: May I respond? That's a
11 loaded question. I have exchanged e-mail
12 correspondence with counsel on that particular
13 meeting, and he's mischaracterized the nature of that
14 meeting. It's just inappropriate.

15 JUDGE EGAN: We're not going to be
16 considering it. So go ahead and proceed.

17 Q (By Mr. Riley) When did you hire experts to
18 assist the groundwater district, or Lone Star, in
19 assessing the TexCom application?

20 A When I became aware of the permit, we
21 contacted, several days prior to the hearing on
22 July 18th, a consulting firm in Houston to do a
23 preliminary review of the application.

24 Based on some comments or
25 recommendations from this firm, we then engaged our

1 legal team to advise us where we needed to go, and,
2 therefore, they hired the expert -- or they are the
3 ones that engaged the expert witnesses.

4 Q I'm sorry. "This firm," which firm are you
5 referring to?

6 A As far as the initial firm that reviewed the
7 applications?

8 Q Yes, ma'am.

9 A LBG Guyton & Associates.

10 Q I'm sorry. I couldn't hear you.

11 A LBG Guyton & Associates.

12 Q LBG Guyton?

13 A Guyton, G-U-Y-T-O-N.

14 Q And were they the consultants that have
15 provided testimony in the hearing?

16 A No, sir.

17 Q No?

18 A No.

19 JUDGE EGAN: Just make sure that he
20 finishes asking you a question before you answer it so
21 the court reporter can take you both down accurately.

22 A Yes, ma'am.

23 Q (By Mr. Riley) So there was a consulting
24 firm that you visited with first or engaged, and they
25 made the recommendation for your experts in this case?

1 A Yes, sir.
 2 Q Who specifically did you work with at LBG
 3 Guyton?
 4 A John Saffert.
 5 Q Now, I understand as general manager, and in
 6 your prefiled testimony, that you have concerns about
 7 TexCom's waste disposal proposal, the Class I well
 8 that's proposed in part of this proceeding.
 9 Have you heard the discussion -- or did
 10 you hear the discussion about Railroad Commission
 11 Class II wells in stratum that are higher or closer to
 12 the surface that also are in the area of the
 13 groundwater resources that you're concerned with?
 14 A Yes, sir.
 15 Q And can you tell me all of the actions or
 16 activities that you've been involved with -- or Lone
 17 Star has been involved with in your participation in
 18 those permitting matters?
 19 A None.
 20 Q Do you have concerns about Class II wells
 21 that are operating in the same area where the TexCom
 22 proposal would be located?
 23 A If there's a potential for contamination,
 24 yes, sir.
 25 Q And as part of your duty as a groundwater

1 district, do you expect that you'll be investigating
 2 those activities?
 3 A If it comes to our attention that there is
 4 the instance of that occurring, yes, sir.
 5 Q Do you not consider the testimony in this
 6 proceeding to call it to your attention?
 7 A Not specifically, no, sir.
 8 Q The fact that there are 53 or so operating
 9 Class II disposal wells that do not subject the
 10 material to testing before being injected into the
 11 Vicksburg and the Frio strata, that didn't spark your
 12 interest or cause you concern?
 13 A There is concern, yes, sir.
 14 Q Do you expect that the district will take
 15 action with respect to that concern?
 16 A I'm sure we will consider it.
 17 Q As it pertains to this application, did you
 18 understand the geology and the discussion that was
 19 diagrammed at the board as to where the TexCom
 20 disposal well will be completed?
 21 A Yes, sir, on a basic level. I'm sure to the
 22 depth that you're probably going to question me maybe
 23 not.
 24 Q I'm not actually going to question you very
 25 deeply, and I'm just going to ask you whether you

1 appreciated the difference between the freshwater
 2 aquifers that you are concerned with and the geologic
 3 layer that TexCom is proposing to inject into?
 4 A Yes, sir.
 5 Q Have you had that explained to you prior to
 6 the testimony in this case?
 7 A Yes, sir.
 8 Q Had you had any discussion with your experts
 9 regarding the Class II disposal wells that I mentioned
 10 just a moment ago?
 11 A No, sir.
 12 Q Was that news to you?
 13 A No. We're aware that there's disposal wells.
 14 I think it would be also important to point --
 15 Q I'm sorry to interrupt you, but it generally
 16 works better if I ask you a question.
 17 JUDGE EGAN: Mr. Riley, I'll instruct
 18 the witness, but you need to wait until he asks you a
 19 question before you can answer. And your attorneys
 20 can go back if they want you to say anything else.
 21 Go ahead, Mr. Riley.
 22 MR. RILEY: I'm sorry.
 23 Q (By Mr. Riley) But to be courteous, is there
 24 something you wanted to say?
 25 A Yes, sir. I just wanted to add that we're

1 not opposing wells of this type. It is the risk
 2 factors that are involved in this that has caused the
 3 district to have concerns of the possible
 4 contamination.
 5 Q I understand. So let's --
 6 A We realize there is benefits to disposal
 7 wells.
 8 Q I want to talk about that with you. So why
 9 don't we talk about that at this time since you bring
 10 it up?
 11 You heard the description of the Conroe
 12 field that's been offered, mostly in
 13 cross-examination, about it being highly fractured or
 14 highly faulted. Did you hear those questions?
 15 A Yes, sir.
 16 Q So when you say you're not generally opposed
 17 to disposal wells, are you opposed to disposal wells
 18 anywhere in the Conroe field?
 19 A I would defer that to experts that would give
 20 us the guidance based on the specific information and
 21 would rather not answer that question.
 22 Q What I'm asking you --
 23 A I do not have an answer.
 24 Q The discussion, as far as you understand it,
 25 was general geology of the Conroe field and a number

<p style="text-align: right;">Page 571</p> <p>1 of artificial penetrations. Do you remember that part 2 of the discussion? 3 A Yes, sir. 4 Q And my question is, since you made the 5 statement that you're not generally opposed, I'm 6 trying to understand what you mean by "you're not 7 generally opposed." 8 Is there a particular aspect of this 9 application that leads you to the position that you're 10 opposed to the TexCom application? 11 A Again, this is information our experts have 12 provided to us that they feel like the risk factors 13 involved are significant enough to cause 14 contamination. Based on that, the district's position 15 would be to oppose this well, and I will leave it to 16 them to explain those risk factors. 17 Q Since you're giving the district's position, 18 we would like to understand what you understand the 19 risk factors to be. 20 A Again, they're technical, and I will let them 21 explain. 22 Q So you have no understanding independent of 23 what experts say as to what risks are associated with 24 the TexCom project? 25 A I think I have answered that, that it's,</p>	<p style="text-align: right;">Page 573</p> <p>1 A That they would have a bond in case of -- to 2 remedy any situation, but we have concerns without 3 some type of financial security that this is a viable 4 facility and operation. 5 Q And while I understand what you're saying, 6 I'm asking you to address the bonding requirement. 7 You're familiar with the bonding requirement? 8 A Yes, sir. 9 Q You understand that the bond has to be in 10 place. Correct? 11 A Yes, sir. 12 Q You do understand the bond is in place -- 13 A Yes, sir. 14 JUDGE EGAN: One at a time, please. 15 Q (By Mr. Riley) -- with respect to the well 16 that exists presently, WDW315? 17 A Yes. 18 Q And at least as it pertains to the financial 19 assurance requirements of the TCEQ, do you have any 20 reason to doubt that those have been satisfied? 21 A That the bond has been secured? 22 Q Yes. 23 A I have no reason to doubt. 24 Q So as far as you know, in spite of your more 25 general concerns based on some SEC filings, you</p>
<p style="text-align: right;">Page 572</p> <p>1 again, technical, and it is their responsibility to 2 answer. I would be more confident in their response. 3 Q Is your answer "yes" to my question then, 4 that you have no independent evaluation of the risks. 5 You're totally dependent -- 6 A No, I do not have an independent evaluation. 7 Q Thank you. There are some parts of your 8 testimony that deals with your concerns regarding 9 TexCom's financial capabilities. Right? 10 A Yes, sir. 11 Q Could you explain the nature of your concern? 12 A We had requested financial information from 13 TexCom, and this was never produced through discovery. 14 The only information the district has been able to 15 obtain is information from the Securities & Exchange 16 Commission, that is dated 2004, which indicates an 17 unstable picture for TexCom, Inc., which is the parent 18 company of TexCom Disposal. 19 Q With respect to the TCEQ program that we're 20 discussing in this hearing, are you aware of the 21 financial assurance requirements that are part of the 22 underground injection control well such as TexCom has 23 proposed? 24 A Yes, sir. 25 Q And what do you understand them to be?</p>	<p style="text-align: right;">Page 574</p> <p>1 understand the financial assurance requirements to 2 have been satisfied? 3 A Yes, sir. They have secured their bond. 4 MR. RILEY: Thank you, ma'am. I have no 5 further questions. 6 JUDGE EGAN: Any redirect? 7 Oh, I'm sorry. Ms. Goss? 8 MS. GOSS: I'm sorry. Excuse me. 9 (Brief pause) 10 CROSS-EXAMINATION 11 BY MS. GOSS: 12 Q Good afternoon, Ms. Jones. I'm Diane Goss, 13 representing the Executive Director, and I just have a 14 question for you -- one question for you. 15 The question is: Could you explain more 16 about the circumstances of your inability to obtain 17 the application from the place it was posted at the 18 county? 19 A We worked closely with the county attorney's 20 office. They had made numerous requests for copies of 21 the application. Once our legal team was engaged in 22 this process, they also requested copies from TCEQ. 23 I personally did not call TCEQ, but I do 24 have confidence in -- and communication from the 25 attorneys that these requests were made, and copies</p>

1 could not be produced, mainly because the file copy
2 could not be found, and the working documents could be
3 provided because of your notes.

4 Q Are you aware of a copy that was on record
5 with the county that the applicant had placed with the
6 county?

7 A Yes, ma'am. This is the copy that I referred
8 to that we felt like was not complete, in that volumes
9 had been checked out for copying, and there was some
10 lack of confidence that that had been returned intact.

11 We also know for a fact at different
12 times TexCom would come and replace copies or
13 documents within that. So we never knew whether it
14 was up to date at the time or actually still complete.

15 MS. GOSS: Thank you very much. I have
16 no further questions.

17 JUDGE EGAN: Okay. I haven't missed
18 anyone else. Right? Any redirect?

19 MR. GERSHON: No redirect, Your Honors.

20 JUDGE EGAN: Okay. You may be excused.
21 Thank you.

22 MR. GERSHON: At this time, we would
23 call Mr. Shull -- Ray Shull.

24 (LS/District Exhibit Nos. 5 through 7
25 marked)

1 Probably a week ago, there was a submission of what I
2 would describe as typographical corrections that were
3 served on all the parties and filed with the Judges.

4 Q (By Mr. Gershon) Beyond those corrections,
5 did you have any additional corrections?

6 A No. Those corrections appear to be in the
7 exhibit in front of me, and I have no further
8 corrections to it.

9 Q So it's your intention that this prefiled
10 testimony be proffered into this case as if you were
11 providing live testimony. Is that correct?

12 A That is correct.

13 Q Okay.

14 MR. GERSHON: Then I would move for
15 admission of District's Exhibits 5 through 7,
16 recognizing the Judge's ruling on objections earlier
17 this week and the exclusion of certain testimony based
18 on those rulings.

19 JUDGE EGAN: District's Exhibits 5
20 through what?

21 MR. GERSHON: 5, 6 and 7.

22 JUDGE EGAN: Thank you.

23 MR. RILEY: I don't have an objection,
24 but I am curious as to whether the record copy has
25 actually been corrected.

1 (Witness sworn)

2 JUDGE EGAN: Would you state your full
3 name for the record?

4 A My name is Ray Lee Shull.

5 JUDGE EGAN: You may proceed.

6 MR. GERSHON: Thank you, Your Honor.

7 RAY LEE SHULL,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GERSHON:

11 Q Good afternoon, Mr. Shull.

12 A Good afternoon.

13 Q Have you been retained to evaluate and
14 produce opinion on behalf of the Lone Star Groundwater
15 Conservation District in this case?

16 A Yes, I have.

17 Q And are you an engineer?

18 A Yes, I am.

19 Q And in that capacity as an engineering
20 consultant working on behalf of the district, have you
21 provided written prefiled testimony in this case?

22 A Yes, I have.

23 Q Do you have any corrections to that prefiled
24 testimony -- that written prefiled testimony?

25 MR. GERSHON: And let me clarify.

1 JUDGE WALSTON: I was about to ask that,
2 too. As far as the objections go, have those portions
3 been redacted?

4 MR. GERSHON: They have not. We -- they
5 have not.

6 MR. RILEY: I thought it was part of
7 your order. I may be mistaken, but I have no
8 objection as long as eventually it gets done.

9 MR. GERSHON: We can accomplish that.

10 JUDGE EGAN: All right. Subject to our
11 orders on the objection, then District Exhibit
12 No. 5 -- or Lone Star District Exhibit Nos. 5, 6 and 7
13 are admitted.

14 And those portions of the prefiled that
15 the objections are sustained need to be redacted prior
16 to the close of the hearing, our copies and the court
17 reporter's copy.

18 (LS/District Exhibit Nos. 5 through 7
19 admitted)

20 JUDGE EGAN: Who is it going to be?
21 Ms. Stewart?

22 MS. STEWART: We have no questions.

23 JUDGE EGAN: Okay. Mr. Forsberg?

24 MR. FORSBERG: No questions, Your Honor.

25 JUDGE EGAN: Ms. Collins?

<p style="text-align: right;">Page 579</p> <p>1 MS. COLLINS: No questions, Your Honor. 2 JUDGE EGAN: Mr. Riley? Mr. Lee? 3 MR. RILEY: Actually, I have a request. 4 Could we have -- I apologize to Mr. Shull. Can we 5 have a ten-minute break? The witnesses have gone 6 pretty quickly this afternoon, more quickly than I 7 anticipated. I need to get some paper in front of me 8 so I can do this efficiently. I'll count the time 9 against me, whatever you like. 10 JUDGE EGAN: I'm fine with a ten-minute 11 break. Anybody have a problem with that? 12 (No response) 13 JUDGE EGAN: We'll come back at 25 till 14 5. 15 MR. RILEY: Thank you. 16 (Recess: 4:25 p.m. to 4:39 p.m.) 17 JUDGE EGAN: We're back on the record. 18 Mr. Riley, are you ready to proceed? 19 MR. RILEY: Yes, Your Honor. Thank you. 20 JUDGE EGAN: Go ahead. 21 CROSS-EXAMINATION 22 BY MR. RILEY: 23 Q Good afternoon, Mr. Shull. 24 A Good afternoon. 25 Q Mr. Shull, as I understand it, you are a</p>	<p style="text-align: right;">Page 581</p> <p>1 Q Do landfills accept -- of course, I'm 2 speaking very generally. Can landfills, if properly 3 permitted, accept liquid solid waste that is 4 considered Class I industrial non-hazardous? 5 A If they're properly permitted, yes. 6 Q Have you ever been involved with any landfill 7 site that has been permitted to accept liquid Class I 8 non-hazardous waste? 9 A Yes. 10 Q And what specifically -- what landfills have 11 you specifically been involved with? 12 A The Tessman Road landfill in Bexar County 13 near the city of San Antonio owned by Allied Waste, 14 also known as BFI. It's a municipal Type 1 landfill 15 permitted to accept Class 1 waste, including liquid 16 waste. That's one. 17 Q Are there others? 18 A A landfill -- at the time we did it, it was 19 initiated by Western Waste Company in Newton County. 20 It had a Class I component of -- that was a landfill, 21 and I believe it was also permitted to accept liquid 22 waste. 23 Q Is it legal, Mr. Shull, in your experience, 24 to -- dispose of liquid Class I non-hazardous 25 industrial waste straight into a permitted municipal</p>
<p style="text-align: right;">Page 580</p> <p>1 licensed professional engineer in the state of Texas. 2 Is that correct? 3 A That is correct. 4 Q And how long have you held that distinction? 5 A Since 1980. 6 Q How do you generally, in general terms, make 7 your living? 8 A As an engineer. 9 Q What types of engineering do you -- typically 10 are you engaged in? 11 A Solid waste disposal, wastewater treatment 12 and collection system design, water treatment and 13 distribution and transportation-type projects. 14 Q So is it fair to say that a good portion of 15 your personal business is in the area of engineering 16 solid waste disposal facilities? 17 A Yes, it is. 18 Q Is it accurate to say, Mr. Shull, that a 19 large part of your work is in the landfill waste 20 disposal business? 21 A Yes, that's accurate. 22 Q And how many years has that been true, sir? 23 A Since probably 1982, '83. 24 Q 1982 or '83? 25 A Yes.</p>	<p style="text-align: right;">Page 582</p> <p>1 solid waste landfill? 2 A No, that's not allowed. 3 Q What has to happen in order for the waste to 4 be disposed of in a municipal solid waste landfill? 5 A The liquids have to be treated and solidified 6 so that there's no free liquids prior to disposal in 7 the landfill. 8 Q How typically are such liquid wastes 9 solidified by a landfill? 10 A Typically by the addition of solidification 11 agents that convert it from a liquid to a solid. 12 Q Are you familiar with any of those 13 solidification agents? 14 A Yes, I am. 15 Q What are some of them? 16 A They typically are, in my opinion, two types; 17 ones that either absorb the liquids into a solid media 18 such as sawdust or even rice hulls are used 19 oftentimes. 20 JUDGE EGAN: Rice -- 21 A Rice hulls -- to such things that chemically 22 fix the liquid within -- such as a cement and fly ash 23 and other fine particles like that that actually 24 absorb the liquids into a chemical matrix I'll call 25 it.</p>

1 Q (By Mr. Riley) How does one determine when a
2 Class I non-hazardous industrial waste is solid enough
3 for disposal into a permitted municipal solid waste
4 landfill?

5 A Typically there's a test called a paint
6 filter test where you take a sample of the waste and
7 put it in a paint filter and see if liquids emerge
8 from that sample.

9 Q And if no liquids emerge, I assume then it's
10 considered a solid at that point and able -- or
11 capable of disposal into a municipal solid waste
12 landfill?

13 A Yes, that's correct.

14 Q Is that your experience?

15 A Yes, it is.

16 Q What type of municipal solid waste landfills
17 in the Conroe area or Montgomery County are there that
18 accept Class I non-hazardous industrial waste?

19 A There's a landfill -- I believe it's
20 currently operated by Waste Management. I did the --
21 I did a lot of engineering on the original conversion.
22 It was a municipal landfill within the city limits of
23 Conroe, and we converted it by a permit to a Class I
24 non-hazardous industrial waste landfill. And it was
25 owned by Western Waste Industries at the time, which

1 evolved into Waste Management now.

2 Q In fact, it's still -- a Western Waste entity
3 is the entity that actually operates that landfill.
4 Correct?

5 A I don't know. I haven't been involved with
6 that for probably ten years.

7 Q The -- do you know -- well, I guess you have
8 no current knowledge of the waste acceptance practices
9 at the Western Waste landfill in the Conroe/Montgomery
10 County area?

11 A No. Again, as I said, I haven't been
12 involved with that facility for approximately ten
13 years.

14 Q Is it fair to assume -- and I don't mean
15 to -- well, actually let me just ask.

16 What is the most recent experience
17 you've had with a Class I municipal solid waste
18 landfill or solid waste landfill that's permitted to
19 accept Class I waste?

20 A The most recent experience would be with the
21 Tessman Road landfill, which is a Type 1 landfill in
22 Bexar County, and also the Gulf Coast landfill, also
23 operated by BFI in Chambers County, which is an
24 industrial landfill. I'm currently working on both of
25 those facilities.

1 Q Could you distinguish for us the difference
2 between a municipal solid waste landfill and an
3 industrial landfill?

4 A If you could narrow that question down by in
5 what respect?

6 Q I'm sorry. That's fair. In terms of the
7 types of waste that could be accepted by one versus
8 the other.

9 A Yes, I can do that. A Type I municipal
10 landfill typically takes municipal waste, solid waste.
11 If they also are permitted to accept Class I
12 industrial waste which is non-hazardous, then they
13 will typically have a dedicated cell where that Class
14 I waste is deposited in and placed.

15 And if they're also permitted to accept
16 liquid waste, they'll typically have a solidification
17 facility where they solidify the waste before it's
18 placed in the Type I cell.

19 An industrial facility does not take any
20 municipal waste. It takes only industrial waste.

21 Q And I appreciate that, Mr. Shull. The
22 process of solidification, I would like to discuss
23 that a little bit further.

24 Is it accurate then, based on your
25 earlier answer, that municipal solid waste landfills

1 or industrial waste landfills that are permitted to
2 accept Class I liquid non-hazardous waste must take
3 some action with respect to that waste before it can
4 actually put it into a landfill cell? Is that
5 correct?

6 A That is correct.

7 Q That's the processing that we were talking
8 about just a moment ago called solidification?

9 A Yes, or stabilization. I've heard it called
10 both terms.

11 Q And you've mentioned already that some
12 stabilization or solidification agent that would be
13 employed at a landfill site to render the waste
14 acceptable for disposal into the landfill. Right?

15 A Yes, I have.

16 Q Now, tell me about a landfill -- a municipal
17 solid waste landfill. Does it have a protective --
18 how is it protective of the human health and
19 environment in terms of the landfill cell itself?

20 A Well, there's numerous factors. Could you be
21 more specific on what you're asking, please?

22 Q Well, why don't you give me a list? And
23 start with the most -- the highest priority, I
24 suppose, or the thing that you would consider most
25 protective of the human health and the environment as

1 pertains to a municipal solid waste landfill.
 2 A Well, I don't know that I can categorize.
 3 Every feature in a landfill design is generally
 4 intended to be protective of human health and the
 5 environment.

6 Q Then we agree. What I would like to focus on
 7 then, just to draw your attention to a particular
 8 aspect, is the liner system. Is that sort of where
 9 the story begins, so to speak?

10 A Well, that's the bottom component and the
 11 initially constructed component of most landfills.

12 Q If I understand the general nature of the
 13 landfill liner, it has evolved over years, but there's
 14 a federal statute referred to as Subtitle D that sets
 15 some parameters for what must be included as part of a
 16 landfill liner. Is that correct?

17 A That is correct.

18 Q And we refer to modern landfills as Subtitle
 19 D landfills. Is that also correct?

20 A Municipal landfills are typically referred to
 21 as Subtitle D compliant landfills.

22 Q As a Subtitle D landfill, is there a
 23 prescriptive liner design; in other words, one
 24 specified by rule or statute that is considered
 25 Subtitle D compliant?

1 A Yes. It's called a composite liner system,
 2 and it's typically composed of two feet of compacted
 3 clay material to meet a defined permeability, and then
 4 a plastic component placed on top of that two feet of
 5 clay and then a protective layer on top of the plastic
 6 and then a leachate collection system typically is put
 7 on top of that layer to collect any liquids that might
 8 percolate down through the waste.

9 JUDGE EGAN: So the bottom layer is
 10 clay -- two feet of clay, and then there's -- what is
 11 the next layer?

12 A A layer of plastic, high density
 13 polyethylene, HDPE.

14 JUDGE EGAN: Then there's a layer --

15 A There's a protective layer on top of the
 16 plastic to keep it from being punctured when waste is
 17 placed on it.

18 JUDGE EGAN: What is that protective
 19 layer?

20 A It's usually additional soil material. It
 21 can be clay, doesn't have to be, because low
 22 permeability is not a requirement for that, but it
 23 depends upon the type of material that's available at
 24 the site usually, and then on top of that you
 25 construct your leachate collection system or layer

1 which has several components to it.

2 JUDGE EGAN: Okay.

3 Q (By Mr. Riley) While we're on the topic, on
 4 the last point, what is leachate?

5 A Leachate is liquid that migrates through or
 6 is initiated from within the waste that collects at
 7 the bottom of the waste thickness and is collected by
 8 the leachate collection system.

9 Q And if I'm understanding correctly then, the
 10 water filters through the disposed material, collects
 11 at the bottom, and that's referred to as leachate?

12 A That's correct.

13 Q And are there chemical constituents that are
 14 typically found in leachate?

15 A Yes.

16 Q And can you name some of them?

17 A Well, it depends upon, of course, the waste
 18 that is percolating through as far as the waste
 19 column, but there's organics, there's inorganics,
 20 there's metals, lots of different compounds in there.

21 Q And if you know, Mr. Shull, how is leachate
 22 that is collected at a municipal solid waste landfill
 23 typically disposed of?

24 A A variety of methods. It can be treated on
 25 site and discharged. It can be hauled off site to

1 treatment by another type of treatment system, either
 2 a municipal system or a commercial private treatment
 3 system. I've seen leachate evaporated on site. I've
 4 seen leachate boiled on site until it's gone.
 5 Leachate can be recirculated back into the waste.

6 Q Did you say boiled?

7 A Yes. It's considered on-site thermal
 8 treatment.

9 Q Do you see a lot of that these days?

10 A Not a lot of it, no.

11 Q But how is leachate classified, if you know,
 12 as -- in the waste classification system at the TCEQ?

13 A It depends upon the source and the facility
 14 where the leachate originates.

15 Q So if it's a municipal solid waste landfill
 16 and there's Class I industrial waste as part of the
 17 landfill waste acceptance authorization, does that
 18 narrow the field of choices as to how the leachate
 19 would be classified?

20 A I believe it does, yes.

21 Q Do you know what the classification would be
 22 for leachate that filters through the waste in a
 23 municipal solid waste landfill that is authorized to
 24 take Class I non-hazardous industrial waste?

25 A Well, a Class I cell at a municipal landfill

<p style="text-align: right;">Page 591</p> <p>1 is required to receive only Class I waste, and when 2 it's closed out, they put a protective cap on the top 3 of it, typically three feet of soil, to separate the 4 Class I waste from the municipal waste, and I believe 5 the leachate from that Class I cell is treated 6 separately from the other leachate at the site, if 7 it's disposed of off site. 8 Q Do you know if it's treated differently 9 because it is considered a Class I non-hazardous 10 industrial liquid waste? 11 A I believe that's correct. 12 Q In your experience, how has leachate been 13 disposed of when it is disposed of from the municipal 14 solid landfill sites that you've worked at? 15 A Predominantly either disposal off site at a 16 publicly owned treatment works, or POTW, or disposed 17 of on site by recirculation. 18 Q What is a POTW? You've used that term a 19 couple of times, and I just want to get it clear. 20 A I think, as I just said, a publicly owned 21 treatment works. 22 Q I didn't hear that part. I just heard POTW. 23 I apologize. 24 A I'm sorry. 25 Q Now that I understand what the terms mean,</p>	<p style="text-align: right;">Page 593</p> <p>1 just on its face value. 2 Q All right. Are you aware of a pretreatment 3 program, though, that would at least, in theory, 4 authorize the receipt of Class I non-hazardous 5 industrial wastewaters into a POTW? 6 A Yes. Most publicly owned treatment works 7 have an industrial pretreatment program where 8 industrial discharges have to meet certain standards 9 for the concentration limits of the pollutants into 10 that system, and if they meet those, then they can 11 discharge that wastewater to that system. 12 Q All right. Once the wastewater is discharged 13 to that system, what happens in a wastewater treatment 14 plant? 15 A The short answer is the wastewater is 16 treated. 17 Q That's a good short answer. Could you be a 18 little more -- elaborate a little further? 19 A Well, it depends upon the type of treatment. 20 There's, you know, typically biological treatment 21 systems. There's physical treatment systems, and then 22 there's chemical treatment systems. 23 Those are the three broad categories, 24 and within each one of those broad categories, there's 25 a number of different types of treatment mechanisms</p>
<p style="text-align: right;">Page 592</p> <p>1 what is your understanding of what is a publicly owned 2 treatment works? 3 A It's a wastewater treatment facility owned or 4 available to the public. 5 Q Have you had any experience with the design 6 or permitting of a wastewater treatment plant? 7 A Yes, I have. 8 Q Have you had any experience in the design or 9 permitting of a publicly owned wastewater treatment 10 plant? 11 A Yes, I have. 12 Q And am I correct then, Mr. Shull, that a 13 publicly owned wastewater treatment plant could accept 14 Class I non-hazardous industrial waste? 15 A My experience is that typically that requires 16 some type of pretreatment or preacceptance to show 17 that that wastewater would not be incompatible with 18 the treatment works at the wastewater treatment plant. 19 Q With that caveat then, can a POTW set 20 pretreatment standards for Class I non-hazardous 21 industrial waste -- liquid, of course -- and receive 22 Class I non-hazardous industrial waste? 23 A Mr. Riley, I don't know. I've never been in 24 that situation where a POTW that I was involved with 25 had a request to receive Class I non-hazardous liquids</p>	<p style="text-align: right;">Page 594</p> <p>1 that are employed. So if you could narrow your 2 question down, I'll try to answer it. 3 Q I'll try to narrow it down or maybe even cut 4 to the end of it. After treatment in a wastewater 5 treatment plant, what, in your experience, happens to 6 the wastewater that has been treated? 7 A The wastewater that is treated is typically 8 either discharged to a receiving stream through an 9 authorized permit; reused in some fashion, also 10 through an authorized permit. I would say possibly 11 recycling can factor into that because they can reuse 12 wastewater for irrigation purposes and things like 13 that. That's certainly the vast majority of the 14 ultimate disposal of that treated wastewater. 15 Q As between the three that you mentioned; 16 discharge, reuse or recycle, which would you expect 17 the greater volume of wastewater from a wastewater 18 treatment plant -- where would you expect that to go? 19 A Well, if you're talking about in the state of 20 Texas, the majority of the volume is treated and then 21 discharged. 22 Q And discharged to the surface waters. Is 23 that correct? 24 A That is correct. 25 Q And those same surface waters are often used</p>

1 as drinking water sources. Is that correct?

2 A Oftentimes they are.

3 Q Have you been present for the testimony over
4 the last couple days, the entirety of testimony?

5 A No, I have not.

6 Q Do you consider disposal of Class I
7 non-hazardous industrial waste into a properly
8 authorized municipal solid waste landfill to be a
9 conscientious and protective way to dispose of that
10 waste?

11 A I don't know enough about that to have an
12 opinion.

13 Q But you've participated in permitting of
14 facilities that could do that. You don't have an
15 opinion as to whether that's protective of human
16 health and the environment?

17 A I don't understand your question.

18 Q I may have balled it up, and I didn't mean
19 to. I'm asking you whether -- I think we discussed
20 that you've worked with municipal solid waste
21 landfills that receive Class I non-hazardous
22 industrial wastewater, solidify it and dispose of it
23 into the landfill.

24 A Yes, I have.

25 Q I thought I heard you say you had been

1 involved in the design of some of those landfill
2 facilities.

3 A Yes, I have.

4 Q Do you consider that activity, if done
5 properly and disposed of in a municipal solid waste
6 landfill that is properly authorized, to be protective
7 of human health and the environment?

8 A Yes, I do.

9 Q That's the essence of my question, is that
10 the liner system that you described, three feet of
11 compacted clay, the leachate collection system, the
12 various other elements you described, is that one of
13 the elements of protectiveness that you would draw on
14 in making that answer -- or forming that answer?

15 A Well, I said two feet of clay for the
16 standard municipal liner system, but, yes, that is
17 correct.

18 Q With the exception of my poor memory of two
19 feet or three feet clay -- less clay than what I
20 remembered -- two feet of clay, you would still
21 consider that to be protective of human health and the
22 environment?

23 A Protective in what regard, sir?

24 Q The same way I was asking the question, that
25 if Class I waste is disposed of in a municipal solid

1 waste landfill with a Subtitle D liner, you would
2 consider that to be protective of human health and the
3 environment?

4 A The reason I'm hesitating is that I believe
5 there may be a requirement that under the Class I
6 cells of a landfill you might have to go to three feet
7 of clay. With that condition, yes.

8 Q Okay. So some remnant memory in my head
9 might have factored in there. Let's use three feet of
10 clay.

11 A I think that's right.

12 Q And I'm tapping into your experience in the
13 landfill industry because alternate types of disposal
14 have become at least a part of the discussion in this
15 case. So I want to borrow you, so to speak, at this
16 time and talk about alternate types of disposal for
17 Class I non-hazardous liquid wastes.

18 A Okay.

19 Q That's why I've been asking these questions.
20 Have you worked for any landfills that are authorized
21 to receive the type of waste I just mentioned that
22 overlie drinking water aquifers?

23 A I'm not sure exactly what a drinking water
24 aquifer would be.

25 Q Let's go with the common sense definition; an

1 aquifer where would one would withdraw water for
2 drinking.

3 A Okay. And since I'm not a geologist, that's
4 not the area of the application that I usually
5 prepare.

6 Q Okay. A landfill application?

7 A Yes.

8 Q The Western Waste facility that you mentioned
9 you worked for ten years ago in the Conroe area -- are
10 you familiar with the drinking water resources in the
11 area of Conroe?

12 A No, I'm not.

13 Q You're retained in this case by the Lone Star
14 Groundwater District. Correct?

15 A That is correct.

16 Q Have you had conversations with Ms. Kathy
17 Jones, who testified a short while ago, about the
18 groundwater resources in the Conroe area and
19 Montgomery County more generally?

20 A No, I have not.

21 Q Have you had conversations with Ms. Jones
22 about your opinions in this case?

23 A No, I have not.

24 Q Mr. Shull, we've met not only prior in this
25 case where I took your deposition, but on other

1 occasions we've met before. The reason for that brief
2 preamble is to orient you that your description of
3 experience, as it pertains to this application, seems
4 somewhat limited -- is that fair -- in other words,
5 experience with underground injection control wells
6 and surface facilities related thereto.

7 A Yes, it's somewhat limited.

8 Q And somewhat limited to this case. Is that
9 also true?

10 A On underground injection wells, I've had some
11 limited experience with those in the past.

12 Q How far in the past?

13 A Over ten years.

14 Q So more than ten years ago, you had some
15 limited experience with underground injection control
16 wells. Correct?

17 A That is correct.

18 Q I think, if I remember correctly -- and,
19 please, if you remember differently, tell me, or if
20 the reality is different, tell me -- that when I asked
21 you if you had ever reviewed the Chapter 331 rules
22 prior to being retained in this case -- Chapter 331
23 rules of 30 Texas Administrative Code -- I believe you
24 informed me that you had not. Is that correct?

25 A If I have, it's been very, very limited.

1 Q So most of your knowledge, if not all of your
2 present knowledge, is related to your work and being
3 retained in the present case that we're here gathered
4 to discuss?

5 A With some very limited exceptions, yes.

6 Q Would that still be the same exception, about
7 ten years ago you remember some limited exposure or
8 limited experience in underground injection control
9 wells?

10 A Yes, I have some exposure to them, but I have
11 never prepared any applications for those types of
12 wells.

13 Q Now, you do have, in spite of not an
14 abundance of experience -- or actually, you've
15 described your experience -- opinions as to whether
16 the application meets the requirements of TCEQ rules.
17 Is that true?

18 A And which application are you talking about?

19 Q That's fair enough. How many applications
20 are pending in this case, if you know?

21 A My understanding is there's an application
22 for the unground injection well and also, separately,
23 an application for the surface facilities.

24 Q Which one were you engaged to review?

25 A The surface facilities.

1 Q From this point forward, can we agree to be
2 discussing that application then, since I wouldn't
3 expect you to have an opinion as to something you
4 didn't review?

5 A Yes.

6 Q So with regard to the surface facility, have
7 you ever permitted a surface facility or been involved
8 in the engineering of a surface facility that
9 correlates or relates to an underground injection
10 control well?

11 A No.

12 Q Your opinion, though, as expressed in your
13 prefiled testimony, is that the surface facility does
14 not meet the TCEQ requirements. Correct?

15 A That is correct.

16 Q And what are those requirements?

17 A In my review, I looked at the application
18 form prepared by the TCEQ, Form INS-0024, and looked
19 at what were the requirements to be developed and
20 prepared in the application, and compared the TexCom
21 application to those requirements.

22 Q So it was your interpretation of the
23 requirements in the TCEQ application form that forms
24 the basis of your conclusion that TexCom did not meet
25 the requirements of TCEQ rules?

1 A That's a large part of the basis, yes.

2 Q When you say, "large part," it sounds like a
3 hedge. So I want to understand the full basis for
4 your opinion.

5 A Additionally, I reviewed the TCEQ rules that
6 related to this application that I could locate and
7 tried to see if there were other requirements in those
8 rules.

9 Q And were you successful in that endeavor?

10 A Successful in what manner, sir?

11 Q In identifying TCEQ rules that you think are
12 applicable to the application for the surface facility
13 that we're here to discuss.

14 A The application form referenced rules --
15 referenced TCEQ rules that I reviewed in the
16 performance of my review, yes.

17 Q So the application form directed you to a
18 particular TCEQ rule. Am I correct?

19 A Several rules but -- not just one rule, but,
20 yes.

21 Q Can you tell me what rules the application
22 form directed you to?

23 A Mostly 305.45 and I think Subparagraph (a) or
24 Paragraph (8) -- or 8, not A -- 8.

25 Q "A," like, in "apple"?

1 A No, (8), I believe. It may be (a)(8). I
 2 don't know right off the top of my head.
 3 Q Is there something you have before that would
 4 help you refresh your recollection as to what rule you
 5 reviewed?
 6 A I think it's in my prefiled testimony, yes.
 7 Q Would you take a moment and review your
 8 prefiled testimony and tell me what you recall
 9 reviewing as an applicable requirement?
 10 A Yes, it was 305.45 Paragraph (a),
 11 Subparagraph (8).
 12 Q Any other rules that you found applicable to
 13 the TexCom application for the surface facility?
 14 A Yes.
 15 Q Could you tell me what it is?
 16 A Well, I believe that all of Section 305.45,
 17 since it relates to the preparation of applications,
 18 relates to the TexCom facility, and the underground
 19 injection well rules, Chapter 331 obviously relate to
 20 that.
 21 Q Is that a full and complete list of the rules
 22 that you have, in your opinion, determined to be
 23 applicable to the surface facility?
 24 A I'll add in that the Texas Engineering
 25 Practices Act. I also reviewed that.

1 Q That's a good one. Let's talk about that
 2 one. As part of your work for landfills, do you --
 3 have you affixed your professional engineer seal to
 4 documents as required by the TCEQ?
 5 A Yes, I have.
 6 Q Have you ever had any discussion or
 7 deliberation with the agency as to a document the
 8 agency asked you to seal and you felt that the
 9 Engineering Practices Act would not authorize you to
 10 seal?
 11 A I've had discussions with the TCEQ where I
 12 didn't think it was appropriate to seal a drawing.
 13 Q And could you explain those experiences?
 14 A One I recall is they were typically drawings
 15 that I didn't believe were engineering drawings. They
 16 were contained within an application for a permit for
 17 a facility, and TCEQ had requested that we affix our
 18 seal to those drawings, and we either thought, well,
 19 it might be enough of a gray area that we went ahead
 20 and sealed, but since it was prepared under my
 21 jurisdiction -- or my supervision or another
 22 engineer's supervision, or we would discuss it with
 23 the TCEQ and resolve it in some fashion.
 24 Q Okay. But is it true, Mr. Shull, in your
 25 experience that generally in those discussions that

1 the TCEQ controls as to what needs to be sealed in an
 2 application and what doesn't need to be sealed in an
 3 application?
 4 A No, I don't think they control. I think the
 5 Texas Engineering Practices Act does.
 6 Q You said there's some gray areas. Let's say
 7 the table of contents to a landfill permit
 8 application. Have you been required, in the course of
 9 your dealing with TCEQ, to affix your professional
 10 engineer seal to the table of contents?
 11 A I have been requested to do that, yes.
 12 Q Have you done it?
 13 A Yes, I have.
 14 Q Is it consistent with your understanding of
 15 the Engineering Practices Act to affix your seal to a
 16 table of contents?
 17 A I think that's a gray area that I don't
 18 disagree with that.
 19 Q That didn't give you pause when you've been
 20 requested to do that by the TCEQ as to whether that
 21 constituted an engineering document?
 22 A No, it didn't.
 23 Q So you're comfortable sealing table of
 24 contents, say, in Volume I of a Part A of a TCEQ
 25 permit application?

1 A Table of contents of engineering reports are,
 2 I think, appropriate.
 3 Q What about a table of contents as it pertains
 4 to land use?
 5 A I don't normally seal land use reports.
 6 Q What about the table of contents that would
 7 include a reference to the land use part of the
 8 application?
 9 A If the table of contents was a line item --
 10 I'm sorry. If the land use report was in the table of
 11 contents as the line item of the larger application, I
 12 would seal that.
 13 Q The reason for my question is because a large
 14 part of your testimony is devoted to whether the
 15 proper documents in the TexCom application had the
 16 seal of a professional engineer.
 17 Do you understand why I'm asking these
 18 questions?
 19 A Yes, I do.
 20 Q You said that there are some gray areas in
 21 your experiences -- your personal experiences in
 22 dealing with what needs to be sealed in an application
 23 and what doesn't need to be sealed in an application.
 24 Am I correct?
 25 A Yes, that's correct.

<p style="text-align: right;">Page 607</p> <p>1 Q And as between your interpretation of what 2 should be sealed or should not be sealed, is it the 3 TCEQ at least that directs whether a document needs to 4 be sealed? 5 A They generally issue an opinion on that in 6 the form of an NOD. 7 Q And have you reviewed the notices of 8 deficiency in this case? 9 A To a limited extent, yes. 10 Q Did you find anywhere where the TCEQ 11 requested that an engineering document, or any other 12 document for that matter, in the TexCom application be 13 affixed with the seal of a professional engineer and 14 TexCom did not comply? 15 A I don't recall that. 16 Q Is it fair then to conclude, Mr. Shull, that 17 TexCom complied with the TCEQ requirements of what 18 documents in the TexCom application needed to be 19 sealed by a professional engineer? 20 A Mr. Riley, I don't remember seeing where the 21 TCEQ issued an opinion one way or the other on that. 22 Q Well, I guess my question was different. My 23 question is, did you find anywhere where TCEQ said, 24 "This document or this diagram or this figure is not 25 properly sealed," and TexCom said, "Well, I'm not</p>	<p style="text-align: right;">Page 609</p> <p>1 that his design was capable of accommodating a 2 hundred-year, 24-hour storm event. 3 A Yes, I heard that. 4 Q Did you disagree with Mr. Brassow's 5 testimony? 6 A No, the volume within the containment area is 7 sufficient for the hundred-year, 24-hour storm event. 8 Q Is that a typical design parameter in your 9 experience of dealing with the TCEQ? 10 A Yes, it is. 11 Q Would you say that, in fact, Mr. Brassow's 12 design would exceed the requirements to contain a 13 hundred-year, 24-hour storm event? 14 A It has a volume that is larger than the 15 rainfall from that area from the hundred-year, 24-hour 16 storm. Is that what you asked? That's what I 17 understand. 18 Q Well, it's close enough to what I asked to be 19 an answer to it, but is the short answer, yes, that 20 you understood his design to accommodate a greater 21 than 100-year, 24-hour storm event? 22 A Yes, I heard that answer. 23 Q Did you have any reason or do you have any 24 reason to disagree with Mr. Brassow's answer? 25 A For the containment area, no.</p>
<p style="text-align: right;">Page 608</p> <p>1 going to seal it"? 2 A No, I didn't find that. 3 Q As far as you know, at least as it pertains 4 to TCEQ's requirements, TexCom sealed the documents 5 TCEQ considered required to be sealed? 6 A As far as I know. 7 Q Were you here when Mr. Brassow testified 8 earlier? 9 A For part of his testimony, yes. 10 Q Did you hear the portion of the testimony 11 where he talked about the design of the process area? 12 He had a term, M something. I can't recall it off the 13 top of my head, but the area where the activity, 14 meaning the unloading -- unloading of trucks into 15 storage tanks would occur? 16 A I heard him refer to an MCA area, but the 17 unloading area, to my understanding, is outside but 18 adjacent to the MCA area. It's defined as the 19 unloading area. 20 Q I don't mean to confuse the terms. I'm 21 trying to orient you to ask you questions about the 22 stormwater capabilities as you understand them in the 23 TexCom application. 24 A Okay. 25 Q Specifically, you heard Mr. Brassow testify</p>	<p style="text-align: right;">Page 610</p> <p>1 Q So your issues then are outside the 2 containment area regarding the management of 3 stormwater. Is that correct? 4 JUDGE EGAN: Management of what? 5 MR. RILEY: Stormwater. 6 A Yes. 7 Q (By Mr. Riley) By "outside the containment 8 area," I'm talking about the area where activity would 9 not occur. Is that also correct? 10 A The unloading area is outside the containment 11 area. 12 Q Is the unloading area contained? 13 A It is directed to, I believe, a sump within 14 the unloading area, and then the stormwater from that 15 area is proposed to be pumped to three tanks. 16 Q Okay. So it's a contained area. It may not 17 be within the containment area that we're discussing 18 for the hundred-year, 24-hour storm event, but it 19 still is in an area that has containment. Is that 20 correct? 21 A Well, I think it is, in the application, 22 sized for the hundred-year, 24-hour storm event, but 23 it's not -- if you want to define one as the MCA area 24 and the other as the unloading area, this would be the 25 unloading area.</p>

<p style="text-align: right;">Page 611</p> <p>1 Q So the unloading area, using that designation</p> <p>2 which is correct -- I'm not disputing that -- the</p> <p>3 unloading area is also designed to accommodate the</p> <p>4 hundred-year, 24-hour storm event?</p> <p>5 A In the manner that I just described, yes.</p> <p>6 Q Do you have any disagreement with the</p> <p>7 accommodation of a hundred-year, 24-hour storm event</p> <p>8 in Mr. Brassow's design?</p> <p>9 A You mean the hundred-year, 24-hour storm as</p> <p>10 the design event?</p> <p>11 Q Yes.</p> <p>12 A No.</p> <p>13 Q What is the nature of your disagreement then</p> <p>14 in whether the unloading area can accommodate a</p> <p>15 hundred-year, 24-hour storm?</p> <p>16 A The application indicates that of the three</p> <p>17 tanks that are required to be available to hold the</p> <p>18 stormwater capacity from that event, two of the tanks</p> <p>19 are used for other purposes, and they must be emptied</p> <p>20 completely prior to the storm event or there's not</p> <p>21 sufficient capacity.</p> <p>22 Q And while we are on this topic, since you and</p> <p>23 I have been having a conversation, what is a</p> <p>24 hundred-year, 24-hour storm event?</p> <p>25 A That is a storm event that has a 1 percent</p>	<p style="text-align: right;">Page 613</p> <p>1 your engineering experience?</p> <p>2 A I don't know. I couldn't see enough detail</p> <p>3 about the system to know if that could be done or not.</p> <p>4 Q Would it involve more than a pump and some</p> <p>5 piping into the MCA?</p> <p>6 A Electrical and controls and valving. That's</p> <p>7 about it, yes.</p> <p>8 Q I may have included that in the piping, at</p> <p>9 least in my way of thinking of things, but one could</p> <p>10 put a pipe into the -- or pump in the sump and a pipe</p> <p>11 to the MCA, and that would address your concern</p> <p>12 regarding whether the storage tanks were full when</p> <p>13 this 1 percent event occurred?</p> <p>14 A That could address that.</p> <p>15 Q Do you have other concerns regarding the</p> <p>16 storm event that you believe do not meet TCEQ</p> <p>17 requirements?</p> <p>18 A The application form indicates that a</p> <p>19 required document is a surface water protection plan</p> <p>20 and outlines the components that are to be addressed</p> <p>21 in that plan, and there's a one-page drawing, I</p> <p>22 believe, submitted as response to the first NOD that,</p> <p>23 from all I could find out, is the surface water</p> <p>24 protection plan, and I don't think that that one</p> <p>25 drawing meets the requirements outlined in the</p>
<p style="text-align: right;">Page 612</p> <p>1 chance of occurring in any one year.</p> <p>2 Q If the storage tanks were full, as you fear,</p> <p>3 during one of these events and the MCA containment</p> <p>4 area has capacity beyond the hundred-year, 24-hour</p> <p>5 storm event, could it be used for additional</p> <p>6 containment if, as you said, the storage tanks were</p> <p>7 full?</p> <p>8 A I don't know. I didn't see anything in the</p> <p>9 application that indicated that the pumping for</p> <p>10 stormwater removal could pump the stormwater to the</p> <p>11 MCA containment area.</p> <p>12 Q The fact that you didn't see it doesn't mean</p> <p>13 that it didn't exist. Is that correct?</p> <p>14 A I suppose that's possible.</p> <p>15 Q So if it did exist, that the pumping system</p> <p>16 was intact and could pump into the MCA and it is</p> <p>17 designed to accommodate larger than a hundred-year,</p> <p>18 24-hour storm event, that is an alternative. Would</p> <p>19 you agree?</p> <p>20 A Under those assumptions. I didn't see that</p> <p>21 laid out in the application anywhere.</p> <p>22 Q Would that simply be a matter of pumping into</p> <p>23 the MCA from the unloading area?</p> <p>24 A If that could be configured, that's correct.</p> <p>25 Q Is that a difficult thing to configure in</p>	<p style="text-align: right;">Page 614</p> <p>1 application form.</p> <p>2 Q In the form. Correct?</p> <p>3 A That's correct.</p> <p>4 Q And you mentioned that the TCEQ at least</p> <p>5 asked for additional information in the form of a</p> <p>6 notice of deficiency, and received a response from the</p> <p>7 applicant, TexCom. And at least the TCEQ seems to</p> <p>8 disagree with your assessment of whether it meets the</p> <p>9 requirements in the application form. Is that</p> <p>10 correct?</p> <p>11 A I don't know. I can't answer for the TCEQ.</p> <p>12 Q Well, let's talk about your experiences in</p> <p>13 dealing with notices of deficiency in applications</p> <p>14 you've submitted. I don't mean to make an assumption.</p> <p>15 Have you only submitted perfect</p> <p>16 applications for permits to the TCEQ?</p> <p>17 A I would like to think so, but they have</p> <p>18 resulted in NODs.</p> <p>19 Q So you've gone through the notice of</p> <p>20 deficiency process?</p> <p>21 A Yes, I have.</p> <p>22 Q Even with your good conscientious engineering</p> <p>23 on the front end of the project, the TCEQ has still</p> <p>24 found things that it believes you should have</p> <p>25 submitted as part of your original application.</p>

<p style="text-align: right;">Page 615</p> <p>1 Correct?</p> <p>2 A Or additional information, that's correct.</p> <p>3 Q And that seems to have occurred on the topic</p> <p>4 that we're discussing where the TCEQ asked for</p> <p>5 additional information, and the applicant responded?</p> <p>6 A Yes, that is correct.</p> <p>7 Q So it's not as though TCEQ overlooked a</p> <p>8 requirement in the application form. They actually</p> <p>9 indicated to the applicant that that information</p> <p>10 needed to be supplemented in the application.</p> <p>11 Correct?</p> <p>12 A Yeah. I believe that they -- there was not a</p> <p>13 surface water protection plan in the original</p> <p>14 application. They asked for that one.</p> <p>15 Q And something was submitted. Whether you</p> <p>16 personally think it's sufficient or not, something was</p> <p>17 submitted to the TCEQ in response to that notice of</p> <p>18 deficiency?</p> <p>19 A That is correct.</p> <p>20 Q And that purported to be a surface water</p> <p>21 protection plan. Correct?</p> <p>22 A It is labeled as such.</p> <p>23 Q And, again, back to my question, it's not an</p> <p>24 oversight then, on the TCEQ's part, based on the</p> <p>25 interaction we just discussed that a surface water</p>	<p style="text-align: right;">Page 617</p> <p>1 Q The answer is you don't know. Is that</p> <p>2 correct?</p> <p>3 A Not off the top of my head, no.</p> <p>4 Q Do you have the form somewhere in the</p> <p>5 exhibits before you?</p> <p>6 A I don't see it here.</p> <p>7 JUDGE EGAN: Are you referring to</p> <p>8 District No. 7?</p> <p>9 MR. RILEY: I think so. I need to check</p> <p>10 with the person who really knows things.</p> <p>11 JUDGE EGAN: I think it's behind your</p> <p>12 prefiled testimony.</p> <p>13 JUDGE WALSTON: I was going to say, is</p> <p>14 Tab 7 the form?</p> <p>15 A Tab 7 is the completed application form. I</p> <p>16 thought you were talking about the blank form, but I</p> <p>17 can refer to my Exhibit 7.</p> <p>18 Q (By Mr. Riley) Your Exhibit 7, though, is</p> <p>19 that the application form that you understand is</p> <p>20 applicable in this case?</p> <p>21 A Yes, it is.</p> <p>22 Q What's the date of your form?</p> <p>23 A April 3, '06.</p> <p>24 Q When was this application submitted?</p> <p>25 A I believe in '05.</p>
<p style="text-align: right;">Page 616</p> <p>1 protection plan needed to be submitted as part of the</p> <p>2 application?</p> <p>3 A That's correct.</p> <p>4 Q You just disagree with the TCEQ's</p> <p>5 determination as to whether it's sufficient or not?</p> <p>6 A I guess that's correct.</p> <p>7 Q And, again, you've never designed a --</p> <p>8 surface facility for a UIC well previously. Correct?</p> <p>9 A That's correct.</p> <p>10 Q The application form we've been referring to,</p> <p>11 is that unique to a Class I non-hazardous liquid waste</p> <p>12 surface facility?</p> <p>13 A I'm not sure if that's unique in that it's</p> <p>14 the only place that it's used for.</p> <p>15 Q You didn't look at -- did you look at the</p> <p>16 instructions for that form?</p> <p>17 A Yes. Well, the form -- the instructions are</p> <p>18 contained within the form, and I seem to believe it is</p> <p>19 for storage facilities associated with underground</p> <p>20 injection wells.</p> <p>21 Q Non-hazardous -- Class I non-hazardous?</p> <p>22 A I think that's correct.</p> <p>23 Q Would it also be inclusive of Class I</p> <p>24 hazardous wells?</p> <p>25 A I don't have the form in front of me.</p>	<p style="text-align: right;">Page 618</p> <p>1 Q Do you know if the form changed from the time</p> <p>2 of submittal by the applicant to the form that you</p> <p>3 referred to in your prefiled testimony?</p> <p>4 A I believe in Mr. Brassow's prefiled testimony</p> <p>5 that I reviewed he stated that there were</p> <p>6 insignificant changes.</p> <p>7 Q That's not my question, though that's</p> <p>8 helpful, but maybe I would have asked that later. Are</p> <p>9 there changes?</p> <p>10 A I haven't seen the previous form, so I don't</p> <p>11 know.</p> <p>12 Q So you haven't looked at the TexCom</p> <p>13 application form, which I believe is the revision from</p> <p>14 September 27, '04 -- 2004?</p> <p>15 A Their form, yes, I've looked at that.</p> <p>16 Q You've looked at it?</p> <p>17 A Yes.</p> <p>18 Q What, if anything, are the changes between</p> <p>19 the one that you've attached as an exhibit to your</p> <p>20 prefiled testimony and the form that was actually in</p> <p>21 place when TexCom applied?</p> <p>22 A Looked to me like it was very similar.</p> <p>23 Q How detailed is your review, Mr. Shull?</p> <p>24 A Relatively detailed.</p> <p>25 Q So is it the same, is it different? And if</p>

<p style="text-align: right;">Page 619</p> <p>1 it's different, how so?</p> <p>2 A I don't recall any differences that I</p> <p>3 noticed.</p> <p>4 Q Regardless of whether there are differences</p> <p>5 or not, is there a part of the form that you can find</p> <p>6 that says it relates only to UIC surface facilities?</p> <p>7 A Well, the title of the form is Permit</p> <p>8 Application to Store, Process Industrial Non-hazardous</p> <p>9 Waste.</p> <p>10 Q And you said that you have experience with</p> <p>11 municipal solid waste landfills that handle this type</p> <p>12 of waste, industrial non-hazardous waste. Correct?</p> <p>13 A That is correct.</p> <p>14 Q And have you ever filled out this application</p> <p>15 form as part of your permitting of a non-hazardous</p> <p>16 waste handling facility at a landfill?</p> <p>17 A No, I have not.</p> <p>18 Q How have you done that, if you've done it at</p> <p>19 all?</p> <p>20 A They have been permitting as part of a</p> <p>21 landfill facility, as a component of that facility.</p> <p>22 Q Do you know that this form does not apply or</p> <p>23 is it your testimony that this form would not apply to</p> <p>24 a surface facility or a storage facility at a</p> <p>25 municipal solid waste landfill?</p>	<p style="text-align: right;">Page 621</p> <p>1 the long-term effects of these lining systems, but</p> <p>2 without some -- no, I haven't done any of those</p> <p>3 studies.</p> <p>4 Q Thank you. Do you know if the city of</p> <p>5 Conroe -- I believe this is what was testified to, but</p> <p>6 I'm going to have to clarify. Does the city of Conroe</p> <p>7 have a publicly owned treatment works?</p> <p>8 A Yes, they do.</p> <p>9 Q Do you know if they accept Class I</p> <p>10 non-hazardous industrial waste?</p> <p>11 A I don't know.</p> <p>12 Q Do you know how the TCEQ handles its</p> <p>13 applications in terms of the date of submission and</p> <p>14 what rules are applicable or what application forms</p> <p>15 are applicable?</p> <p>16 A My understanding is that you're reviewed</p> <p>17 under the rules in effect upon the date of submission,</p> <p>18 and in some cases, when it's declared administratively</p> <p>19 complete.</p> <p>20 Q Thank you. I wanted to ask you a question</p> <p>21 about your testimony on Page 11, Lines 3 and 4.</p> <p>22 I'm sorry. Withdraw the question.</p> <p>23 MS. GOSS: I have no further questions.</p> <p>24 Thank you, Mr. Shull.</p> <p>25 A Thank you.</p>
<p style="text-align: right;">Page 620</p> <p>1 A I've testified I've never had to complete</p> <p>2 this form.</p> <p>3 MR. RILEY: Thank you, everyone.</p> <p>4 Mr. Shull, I have no further questions.</p> <p>5 JUDGE EGAN: Ms. Goss?</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MS. GOSS:</p> <p>8 Q Mr. Shull?</p> <p>9 A Yes.</p> <p>10 Q My name is Diane Goss. I represent the</p> <p>11 Executive Director. I have a few questions for you.</p> <p>12 A All right.</p> <p>13 Q Can you tell me if leachate from a Class I</p> <p>14 waste cell in a municipal solid waste landfill can be</p> <p>15 recirculated?</p> <p>16 A That can be recirculated within the Class I</p> <p>17 cell but not within the municipal waste.</p> <p>18 Q Thank you. Do you have any knowledge about</p> <p>19 the fate of the liner system -- the plastic liner</p> <p>20 system in response to industrial non-hazardous Class I</p> <p>21 constituents?</p> <p>22 A Could you define what you mean by "fate"?</p> <p>23 Q What might -- if it degrades or erodes in any</p> <p>24 way the landfill.</p> <p>25 A I know there have been a number of studies of</p>	<p style="text-align: right;">Page 622</p> <p>1 JUDGE EGAN: Mr. Gershon, do you have</p> <p>2 any redirect?</p> <p>3 MR. GERSHON: Just a moment, Your Honor.</p> <p>4 (Brief pause)</p> <p>5 MR. GERSHON: I do have some.</p> <p>6 JUDGE EGAN: Okay. Proceed.</p> <p>7 REDIRECT EXAMINATION</p> <p>8 BY MR. GERSHON:</p> <p>9 Q Mr. Shull, Mr. Riley had asked you whether</p> <p>10 certain documents presented in the application --</p> <p>11 talking about the industrial solid waste permit</p> <p>12 application -- may have required an engineering seal,</p> <p>13 documents that were part of the application, whether</p> <p>14 they required a seal.</p> <p>15 He did not walk you through each of the</p> <p>16 engineering drawings and the list of documents you</p> <p>17 provide in your testimony, and I just want to clarify</p> <p>18 for the record what you intended by your answer to</p> <p>19 Mr. Riley.</p> <p>20 I think it was at least unclear to me</p> <p>21 whether your answer was, no, there were no documents</p> <p>22 whatsoever that required a seal, or whether there</p> <p>23 might be.</p> <p>24 Could you clarify your answer to the</p> <p>25 question, are there any documents contained within the</p>

<p style="text-align: right;">Page 623</p> <p>1 applicant's application that may require a seal but 2 that were not sealed? 3 A Yes. 4 Q Let me ask you, would it help to refresh your 5 recollection? I mean, the list is in your prefiled 6 testimony, if that's helpful. I mean, you have an 7 opportunity to look at that. Would that be helpful? 8 A Certainly. 9 Q Okay. I have it at Page 24 of your prefiled 10 testimony, beginning -- 11 A Yes, Line 10 on Page 24 outlines that I was 12 referring to TexCom Exhibit 39, and on Page 33, it 13 starts the -- I guess Section IV, titled Engineering 14 Report. That's obviously an engineering document. 15 It's titled Engineering Report. 16 Then on TexCom Exhibit 41, on Page 3, 17 entitled Waste Management Unit, it has 26 management 18 units and design capacity shown. That's obviously an 19 engineering document in my opinion. 20 And Page 4 of Exhibit 41 is surface 21 equipment. It has 30 management units described in 22 the description, the minimum number required for the 23 facility. To me, that's an engineering document 24 prepared by an engineer. 25 And Page 5 of 6 of Exhibit 41, the waste</p>	<p style="text-align: right;">Page 625</p> <p>1 this list are engineering drawings or documents that 2 would require a seal? 3 A In my opinion, they are. 4 MR. GERSHON: I have no other questions. 5 JUDGE EGAN: That was all? 6 MR. GERSHON: That was my only question. 7 JUDGE EGAN: Any recross? 8 MR. FORSBERG: No questions. 9 MS. COLLINS: No questions. 10 JUDGE EGAN: Mr. Riley? 11 MR. RILEY: Just briefly on the last 12 topic. 13 RECROSS-EXAMINATION 14 BY MR. RILEY: 15 Q You mentioned that there were gray areas as 16 to what needs a seal and what doesn't need a seal, and 17 you've experienced some of those interactions with the 18 TCEQ. Is that correct? 19 A That is correct. 20 Q So you're saying that this is black and 21 white? 22 A A document titled Engineering Report is black 23 and white. 24 Q I understand it's colored black and white, 25 Mr. Shull, and I'm not trying to be cute. Are you</p>
<p style="text-align: right;">Page 624</p> <p>1 management unit information, it has 26 permitted unit 2 descriptions, waste numbers and types to be made to 3 each unit. To me, that's an engineering seal. 4 And it's not in this section, but the 5 surface water protection plan, to me, is obviously an 6 engineering document that should have been sealed. 7 Q Were you in any way amending this testimony 8 by the way you answered Mr. Riley's questions? 9 A No, I was not. 10 Q So let me make sure I understand. I think 11 Mr. Riley was trying to get you to make clear in the 12 record whether TCEQ had any requirements for 13 engineering seals. 14 Do you know whether TCEQ has specific 15 requirements for -- that the seals be provided for 16 each of these items as you've just listed? And 17 does -- well, once you answer, I've got a follow-up 18 question to that. 19 A I think in the TCEQ rules, they require that 20 all engineering documents be sealed by a professional 21 engineer registered in the state of Texas, and they're 22 basically quoting the Texas Engineering Practices Act 23 for that requirement. 24 Q And just to make sure that I understood your 25 testimony, are you saying that each of the items on</p>	<p style="text-align: right;">Page 626</p> <p>1 saying that it is black and white under the Texas 2 Engineering Practices Act that that document must be 3 sealed? 4 A In my opinion, it is. 5 Q That's not my question. Is it black and 6 white; not in your opinion, not in your 7 interpretation. It's black and white, or could it be 8 in a gray area? 9 A No, I don't believe so. 10 JUDGE EGAN: You don't believe that it's 11 in a gray area? 12 A That is -- yes. I don't believe it's in a 13 gray area. 14 Q (By Mr. Riley) Are you an expert in legal 15 requirements under the Texas Engineering Practices 16 Act? 17 MR. GERSHON: I'm going to object. That 18 calls for a legal conclusion. I think that what 19 Mr. Riley is asking for is a legal interpretation of 20 those requirements that this expert is not qualified 21 to provide. I think he's qualified to provide what 22 his experience is and his understanding is, and I'm 23 fine with him answering the question, but I would make 24 an objection that if you're asking for a legal 25 opinion, this expert is not an attorney.</p>

<p style="text-align: right;">Page 627</p> <p>1 JUDGE EGAN: I understand he's not an 2 attorney. Objection overruled, but you might want to 3 rephrase the question because I'm not sure what you 4 meant. 5 MR. RILEY: Fair enough. 6 Q (By Mr. Riley) You're not offered as a legal 7 expert. Is that correct? 8 A That is correct. 9 Q And is it also correct that your expertise in 10 this matter is limited to the requirements for meeting 11 TCEQ regulations as it pertains to the TexCom 12 application? 13 A My expertise in this is as 26 years as a 14 registered professional engineer in Texas. 15 Q How are you qualified in this matter, if you 16 know? 17 A In what specific manner, of whether a 18 document should be sealed or not? 19 Q No, no, no. I'm asking you, were you 20 designated as an expert under the -- to make a -- or 21 to offer an opinion on the requirements of the Texas 22 Engineering Practices Act? 23 A I think I'm offered to offer an opinion on 24 whether documents that are submitted to the TCEQ 25 should be sealed or not.</p>	<p style="text-align: right;">Page 629</p> <p>1 documents are clearly engineering documents requiring 2 seals. Some are clearly not engineering documents not 3 requiring seals. There are some that are in gray 4 areas, yes. 5 Q All right. Based on your personal 6 experience, you've dealt with engineering documents in 7 that gray area -- 8 A Yes, I have. 9 Q -- where the TCEQ thought it was an 10 engineering document and you didn't think it was an 11 engineering document? 12 A That has occurred. 13 MR. RILEY: Thank you. I have no 14 further questions. 15 JUDGE EGAN: Anything further from the 16 ED? 17 MS. GOSS: No further questions. Thank 18 you. 19 JUDGE EGAN: Anything further, 20 Mr. Gershon? 21 MR. GERSHON: I have none. 22 JUDGE EGAN: Okay. Did you have any 23 questions? 24 JUDGE WALSTON: No. 25 JUDGE EGAN: You may be excused. Thank</p>
<p style="text-align: right;">Page 628</p> <p>1 Q That's the extent of your expertise? 2 A No. 3 Q Let's go around again. Are you qualified, 4 through training or experience, to offer a legal 5 opinion? 6 A No. 7 Q Is the Texas Engineering Practices Act a 8 legal statute? 9 A I believe it is. It's a legally authorized 10 and developed statute. 11 Q Then are you an expert -- a legal expert in 12 interpreting the requirements of the Texas Engineering 13 Practices Act? 14 A I am not a legal expert in that, no. 15 Q So that is simply your personal opinion, not 16 based on training or expertise to give a legal 17 interpretation. Correct? 18 A That is correct. 19 Q And the best you could offer us is that in 20 your experience that you have had to affix your seal 21 to certain documents that you would consider in a gray 22 area under the Texas Engineering Practices Act when 23 you've performed or submitted permit applications to 24 the TCEQ? 25 A Not just in gray areas. I feel some</p>	<p style="text-align: right;">Page 630</p> <p>1 you. 2 A Thank you. 3 JUDGE EGAN: Okay. 4 MR. HILL: Your Honors, I know we're 5 approaching the six o'clock hour. We're happy to call 6 our next witness. We're happy to take that up first 7 thing tomorrow, whatever you -- 8 JUDGE EGAN: Why don't we go ahead and 9 call your next witness and get the direct in, and then 10 we'll start tomorrow with cross. 11 MR. HILL: In that case, the Lone Star 12 Groundwater Conservation District calls Philip Grant. 13 (LS/District Exhibit Nos. 8 through 15 14 marked) 15 (Witness sworn) 16 JUDGE EGAN: Would you state your full 17 name for the record? 18 A Philip Robert Grant. 19 JUDGE EGAN: Mr. Hill, you may proceed. 20 MR. HILL: Thank you, Your Honors. 21 PHILIP ROBERT GRANT, 22 having been first duly sworn, testified as follows: 23 DIRECT EXAMINATION 24 BY MR. HILL: 25 Q Good evening, Mr. Grant.</p>

<p style="text-align: right;">Page 631</p> <p>1 A Good evening.</p> <p>2 Q Would you mind explaining how you have been</p> <p>3 called to testify in this case?</p> <p>4 A I have been called to testify as to the</p> <p>5 injection well permit application filed by TexCom for</p> <p>6 the area -- the Conroe area on this specific issue,</p> <p>7 and I have been -- I'm an employee of Terra Dynamics,</p> <p>8 and Terra Dynamics was retained by Lloyd, Gosselink</p> <p>9 and associates to review this application document.</p> <p>10 Q In the course of that review, was that done</p> <p>11 ultimately on behalf of Lone Star Groundwater</p> <p>12 Conservation District to your understanding?</p> <p>13 A Ultimately on behalf of Lone Star, yes,</p> <p>14 Groundwater Conservation District.</p> <p>15 Q In the course of that review, have you</p> <p>16 prepared prefiled testimony?</p> <p>17 A Yes, I have.</p> <p>18 Q Is that prefiled testimony before you as</p> <p>19 exhibit -- District Exhibit 8?</p> <p>20 A Yes, it is.</p> <p>21 Q Are there any corrections to that testimony</p> <p>22 you would care make?</p> <p>23 A Yes. There are several minor -- just</p> <p>24 corrections to that, errors in the information.</p> <p>25 On Page 60, Line 20, it should have</p>	<p style="text-align: right;">Page 633</p> <p>1 stop? Are you finished with your --</p> <p>2 MR. HILL: I'm prepared to pass the</p> <p>3 witness.</p> <p>4 JUDGE EGAN: All right. We'll reconvene</p> <p>5 tomorrow morning at nine o'clock. And for scheduling</p> <p>6 purposes, I believe that on Friday we're going to</p> <p>7 adjourn at 5 so everyone can get home before midnight.</p> <p>8 I know there are a number of people who are from out</p> <p>9 of town. Does anybody have any problem with leaving</p> <p>10 at 5 instead of 6?</p> <p>11 JUDGE WALSTON: I want to stay till 6.</p> <p>12 (Laughter)</p> <p>13 MR. FORSBERG: Your Honor, are we off</p> <p>14 the record?</p> <p>15 JUDGE WALSTON: Yeah. We can go off the</p> <p>16 record, yes.</p> <p>17 MR. FORSBERG: I want to discuss a</p> <p>18 scheduling issue off the record.</p> <p>19 JUDGE EGAN: We're off the record then.</p> <p>20 (Proceedings adjourned at 5:44 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 632</p> <p>1 read, "issue that the 18 wells," not "issue that the</p> <p>2 SW wells." So "18" replaces "SW."</p> <p>3 Q Okay.</p> <p>4 A On Page 61, Line 1, it should read "depth of</p> <p>5 18 of these wells," not "depth of any of these wells,"</p> <p>6 and that is the total of my corrections.</p> <p>7 Q Okay. With those corrections then,</p> <p>8 Mr. Grant, do you offer up this prefiled testimony as</p> <p>9 though you were giving it under oath on the stand this</p> <p>10 evening?</p> <p>11 A Yes, I do.</p> <p>12 JUDGE EGAN: All right. There was an</p> <p>13 objection sustained as to Mr. Grant's testimony on</p> <p>14 Page 41. Has that been redacted from --</p> <p>15 MR. HILL: It has not, Your Honors, but</p> <p>16 it will be redacted by the end of the hearing, and</p> <p>17 subject to Your Honors' ruling on that motion with</p> <p>18 respect to his testimony, the district would offer up</p> <p>19 District Exhibit Nos. 8, 9, 10, 11, 12, 13, 14 and 15.</p> <p>20 JUDGE EGAN: Subject to our ruling on</p> <p>21 the objections, Exhibits 8, 9, 10, 11, 12, 13, 14 and</p> <p>22 15 offered by the district are admitted.</p> <p>23 (LS/District Exhibit Nos. 8 through 15</p> <p>24 admitted)</p> <p>25 JUDGE EGAN: Is this a good place to</p>	

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